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## Next Phase Pedagogy Reform for the Twenty-First Century Legal Education: Delivering Competent Lawyers for a Consumer-Driven Market

Ann Marie Cavazos

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# CONNECTICUT LAW REVIEW

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VOLUME 45

MAY 2013

NUMBER 4

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## Article

### Next Phase Pedagogy Reform for the Twenty-First Century Legal Education: Delivering Competent Lawyers for a Consumer-Driven Market

ANN MARIE CAVAZOS

#### *Abstract*

*The underpinnings for law school training has or, I submit, soon will be, outstripped by real world requirements dictated by the demands of the legal profession marketplace. This Article is designed to add to the discourse relating to the question of what law schools supply and what law practice requires—a paradigm shift in the methodology of implementing legal education. The Article begins by reporting on the state of the law school process and how it has evolved from an apprenticeship, replete with on-the-job training, to an intellectual exercise that is somewhat removed from the requirements for becoming competent legal professionals. The Article concludes that meeting the current and future needs of the public and the legal profession will require fundamental changes in law school structure, curricula, and priorities, including some teaching methodologies that have been downplayed or discarded. Law schools have to prepare students for the semi-holistic dimension of legal practice, which includes the interpersonal component of the practice of law. The Article further concludes that a transformation of legal education is a moral imperative and a competitive necessity to meet the demands of the current and future attorney marketplace.*

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# Next Phase Pedagogy Reform for the Twenty-First Century Legal Education: Delivering Competent Lawyers for a Consumer-Driven Market

ANN MARIE CAVAZOS\*

*When you haven't changed your curriculum in 150 years, at some point you look around . . . [and t]he impetus for the changes is the sense that what has been taught and how it has been taught may be embarrassingly disconnected from what anybody does . . . .*<sup>1</sup>

## I. INTRODUCTION

Prediction: The legal marketplace is quickly becoming pragmatic, where practical analytical, writing, and clinical experiences are prioritized over students' theoretical preparation in academia. In light of this, law schools that fail to recognize and adapt to these changes will be at a significant competitive disadvantage. That is, law schools which ignore the legal marketplace's demands for a pedagogical shift will not only fail to attract the best law school candidates, but will also limit their own students' marketability and potential.

The evolution of legal education has come full circle as apprenticeships and practical skills training are once again evaluated as pivotal aspects for effective legal training. What was of concern in the past, when left unaddressed, is still true and relevant today.

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<sup>1</sup> Jonathan D. Glater, *Training Law Students for Real-Life Careers*, N.Y. TIMES, Oct. 31, 2007, at B9 (quoting U.S. Supreme Court Justice Elena Kagan, then-Dean of Harvard Law School) (internal quotation marks omitted).

I had plead causes also in a simulated court, where our professor presided, & I was considered able and eloquent. . . . I am sure I may say without vanity that I [was] prepared more than most of the Lawyers who then were practicing at the bar. . . . [T]his technical & practical part [of the law] is to be learned only in an attorney's office. My advice therefore always would be to everyone to pass one year in this way previous to the commencement of the practice. . . . Scientific students [of the law] are apt to despise the mere technical & practical [part] of the business—that is the process or forms of pleading. . . . I had read the best reporters, but I was miserably ignorant of the mere technical forms. These were known to the clerks of courts . . . & I despised them.<sup>2</sup>

These words of frustration were spoken by a law student in 1816, almost two hundred years ago; nevertheless, in the twenty-first century, these words continue to ring true. Today, law schools are ineffective in their preparation of law students who are ineffectual in their ability to be able to “hit the ground running” to practice law. Educators need to redefine and incorporate a systematic methodology of bridging theory and practice in more ways than clinics currently offer. The post-modern era and the tough economy that await graduates dictate that the emerging attorney must have a more developed practical and technical skill set in order to be a provider of services soon after leaving law schools.

American legal education currently provides solid grounding in the traditional areas of legal theory, reasoning, issue spotting, and legal research and writing. However, today's consumers—legal employers and their clients—drive the marketplace demands of law school graduates, and these consumers demand more. Law schools are turning out record numbers of graduates, yet there is a fundamental disconnect between the skills of new lawyers and the demands of the marketplace. The recession has amplified the need for all consumers of legal services to reduce costs. The slow economy suggests that some aspects of this change in the legal landscape may return to normalcy when the recession ends. However, I submit that the major changes relating to eliminating unnecessary costs are permanent, particularly where such costs are driven by inefficient processes and procedures. Law firms, corporations, and government agencies facing restrained budgets are demanding increased productivity from all personnel. Such demands have, in turn, impacted the way the

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<sup>2</sup> Davison M. Douglas, *The Jeffersonian Vision of Legal Education*, 51 J. LEGAL EDUC. 185, 206–07 (2001) (internal quotation marks omitted). “William Short, a Wythe student whom Jefferson considered his “adopted son,” commented about his William and Mary education . . . .” *Id.* at 206. “In particular, Short commented that he did not have sufficient knowledge of forms of pleading after his Wythe training . . . .” *Id.* at 207.

legal marketplace views the traditional model of foregoing the productivity of numerous attorneys by diverting efforts toward developing and nurturing new law graduates. With time and money at a premium, consumers now expect newly hired attorneys to be able to handle real cases and do the job of lawyering from the moment they walk through the door. Employers' expectations of new hires have shifted "from patience for a reasonable lengthy post-graduate training period to a presumption that the law graduate can hit the ground running."<sup>3</sup> Law firms that continue in this model can no longer flow the cost through their clients: they must eat the cost at the expense of profit margins.<sup>4</sup> Clients of sole practitioners are faced with their attorneys gaining on-the-job experience at their expense. However, clients are no longer willing to shoulder this expense.<sup>5</sup> Thus, even if the client is unaware of the quality of representation they receive, they should not have their lack of knowledge exploited. This change in demand by consumers of legal services requires a concomitant shift in the preparedness of the supply.

Graduates, who face the job market well-armed in theory, but having no confidence in practice, find themselves virtually obsolete at the outset of their careers, yet still have tens of thousands of dollars in student loan debt that requires a job to repay.<sup>6</sup> Unchecked, this outcome does not bode well for the future of law schools in general and begets the mandate for change in legal education—to respond to the needs of both its consumer base and the law students whom they have failed by not adequately preparing them to meet the needs of this generation's employment environment.

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<sup>3</sup> Ann Marie Cavazos, *Demands of the Marketplace Require Practical Skills: A Necessity for Emerging Practitioners, and Its Clinical Impact on Society—A Paradigm for Change*, 37 J. LEGIS. 1, 6 (2011) [hereinafter Cavazos, *Demands of the Marketplace Require Practical Skills*] (internal quotation marks omitted).

<sup>4</sup> William Kummel, Note, *A Market Approach to Law Firm Economics: A New Model for Pricing, Billing, Compensation and Ownership in Corporate Legal Services*, 1996 COLUM. BUS. L. REV. 379, 406 (1996) (noting that under the traditional billing system, clients bear financial burden and law firms are tempted by hourly billing to inflate activities, which has led to clients' use of external controls to stop over-charging).

<sup>5</sup> David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 20, 2011, at A1 [hereinafter *What They Don't Teach*].

<sup>6</sup> See David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 9, 2011, at BU1 (describing the astronomical cost of law school and the diminishing job prospects, but the need to take any job to help pay back loans). New graduates face an environment where once potential clients now have ready access to an abundance of do-it-yourself legal information through the Internet, books, instructional videos, and seminars. See RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* 121, 238–39 (Oxford Univ. Press 2008) (explaining the reality that many clients cannot attain the assistance of lawyers and must gain legal awareness and education from sources such as websites, newspapers articles, and TV). As a result, an increasingly economically challenged client base can often handle "bread and butter" type work such as forming business entities, preparing wills, buying and selling real property, and drafting service agreements without the assistance of a lawyer. See *id.* at 238 (clients are engaged in do-it-yourself lawyering due to economic times).

The history of legal education reflects an evolution based on the bargaining power and demands of the legal environment. Legal education started with self-instruction, apprenticeships where legal skills were practiced under the guidance of an experienced attorney, progressed to lectures on practical litigation and finally to the more formal legal education system we know today. Lawyers have learned their craft in a manner that reflected and was developed through the times in which they've lived. The American Bar Association ("ABA") noted the need for continued evolution in the MacCrate Report of 1992 ("MacCrate Report"), which called for more practical skills training in order to provide a more competent law school graduate.<sup>7</sup> America's legal education institutions responded positively to the MacCrate Report by implementing clinics, legal drafting courses, and by offering other opportunities for students to begin learning the craft of the profession.<sup>8</sup> However, in light of the current job market, it is essential that schools take the next logical step in continuing the progression of relevance by escalating the speed and intensity of practical skills training in order to better prepare the students for the practice of law.

Other professional education systems have faced and taken steps to address the need for their graduates to be competent practitioners by including practical client-based training. Both United States medical schools and British legal training schools incorporate clinical exposure from the outset of their students' formal training. Meanwhile, the bulk of current law school pedagogy persists in focusing on theory and analysis to the exclusion of practical client-based training. Practical skills and clinical training is often optional and unavailable until the second or third year of education. Failure to adequately integrate training in practical and technical skills in the safe and mentored environment of law school has resulted in our nation's law schools lagging in the marketplace by turning out graduates who are largely unprepared for the current job environment and who may then, as a consequence, find themselves questioning the investment in their education.<sup>9</sup>

The premise of this Article is that it is the duty and obligation of the ABA, as the regulator of law schools, and law schools themselves as businesses, to effectively ensure that law graduates are competent to practice law when they complete their legal education. Part II of this Article addresses the factors that impact supply and demand in the market

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<sup>7</sup> *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 1992 A.B.A. SEC. ON LEGAL EDUC. & ADMISSIONS TO THE BAR 330–34 (1992) [hereinafter MACCRATE REPORT].

<sup>8</sup> See, e.g., *What They Don't Teach*, *supra* note 5 (many schools now offer legal clinics to assist students in learning how to counsel, draft, and litigate their own cases).

<sup>9</sup> Cavazos, *Demands of the Marketplace Require Practical Skills*, *supra* note 3, at 6; *What They Don't Teach*, *supra* note 5.

for new graduates, and inputs that have an effect on law school pricing. Part III recaps how legal education evolved from an apprenticeship model to the case-study pedagogy by meeting the evolving demands in the legal profession. Part IV discusses the current legal education pedagogy. Part V examines educational practices of other professions to glean lessons that may be productively applied to our system of legal training. Lastly, Part VI offers a few proposals to better prepare for the transformation of legal education that is necessary to meet the needs of the current and future marketplace.

## II. SUPPLY AND DEMAND FOR THE LAW SCHOOL PRODUCT: LEGAL GRADUATES

A slow economy affects all jobs, careers, and professions.<sup>10</sup> However, the legal profession is especially adversely impacted. As for young lawyers, whether laid off, underemployed, entrepreneurial as a default rather than a choice (solo practitioner or newly formed partnership), or never employed, the future looks bleak.<sup>11</sup> The demand for legal services has been significantly affected because of the slow economy; thus, every area of the practice of law is impacted, particularly real estate, wills, trusts and estates, and corporations.<sup>12</sup> Because corporate transactions, both domestically and globally, are driven by growth as a byproduct of sales and profits,<sup>13</sup> corporations are unlikely to acquire or merge with new entities, hire additional employees, purchase or lease additional space, add new product lines, or incur any non-discretionary cost in a contracting economy.<sup>14</sup> Moreover, in a down economy, corporations, like individuals, tend to have a negative growth resulting in divestments of poorly performing products, services and employee downsizing, including

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<sup>10</sup> See *Occupational Outlook Handbook: Job Outlook*, U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, <http://www.bls.gov/ooh/Legal/Lawyers.htm#tab-6> (last visited Jan. 29, 2013) [hereinafter U.S. DEP'T OF LABOR] ("Job opportunities are typically affected by cyclical swings in the economy."). "Competition should continue to be strong because more students are graduating from law school each year than there are jobs available." *Id.*

<sup>11</sup> Rachel M. Zahorsky, *Recession Deprives Young Associates of Tools to Move Ahead*, A.B.A. J. (Dec. 1, 2010, 12:55 AM), [http://www.abajournal.com/magazine/article/skills\\_gap\\_recession\\_deprives\\_young\\_associates\\_of\\_tools\\_to\\_move\\_ahead?utm\\_source=maestro&utm\\_medium=email&utm\\_campaign=default\\_email](http://www.abajournal.com/magazine/article/skills_gap_recession_deprives_young_associates_of_tools_to_move_ahead?utm_source=maestro&utm_medium=email&utm_campaign=default_email).

<sup>12</sup> U.S. DEP'T OF LABOR, *supra* note 10.

<sup>13</sup> See generally *Research Trends and Conclusions: Mergers & Acquisitions 2013*, WHO'S WHO LEGAL (Feb. 2013), <http://www.whoswholegal.com/news/analysis/article/30268> (reporting that deal volumes and values have remained low due to uncertainty caused by the election and concerns over the fiscal cliff, which collectively have impacted the legal market by creating a reported increase in lateral hiring and growing competition for clients via a reverse bidding war on fees).

<sup>14</sup> *Id.*



attorneys.<sup>15</sup> Similarly, the reduction in litigation has a negative cascading effect on the provision of legal services and the demand for attorneys representing the poor.<sup>16</sup> On the other hand, difficult economic times can generate more work in areas such as criminal law, bankruptcies,<sup>17</sup> foreclosures, repossessions, and divorces.<sup>18</sup>

#### A. *Demand for Increased Efficiency and Lower Costs*

In periods of economic challenge, individuals and businesses are forced to do more with less. Law firms, like all other businesses, must look for ways to cut costs while enhancing services simply to keep the doors open. Clients have reassessed their legal expense priorities and have an abundance of do-it-yourself-type information that allows them a low-cost alternative to routine legal assistance (although at times, an inadequate substitute).<sup>19</sup> As more competition and a dwindling customer base from which to draw business becomes the new market reality for law firms, the balance of power between the attorneys and clients has shifted.<sup>20</sup> Clients are letting it be known that they are no longer willing to tolerate or pay non-competitive high fees.<sup>21</sup> They seek firms that are willing to have a “new kind of lawyer-client relationship” that emphasizes working collectively to (1) contain costs, (2) deliver service efficiently, (3) increase

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<sup>15</sup> See U.S. DEP’T OF LABOR, *supra* note 10 (“[C]orporations are less likely to litigate cases when declining sales and profits restrict their budgets. Some corporations and law firms may even cut staff to contain costs until business improves.”).

<sup>16</sup> See Hal Bartle, *Purpose of an IOLTA Checking Account for a Lawyer*, EHOW.COM, [http://www.ehow.com/about\\_6652075\\_purpose-iolta-checking-account-lawyer.html](http://www.ehow.com/about_6652075_purpose-iolta-checking-account-lawyer.html) (last visited Jan. 29, 2013) (explaining that pooled money from Interest on Lawyers’ Trust Accounts (“IOLTAs”) are adversely affected by reduction in litigation). In Florida, the reduction in litigation and the concomitant reduction in IOLTA fees has resulted in layoffs of lawyers from legal services organizations. See Anna Sale, *Legal Aid Services Suffering from Economic Downturn*, WNPR (Nov. 24, 2008), <http://www.cpb.org/article/legal-aid-services-suffering-economic-downturn> (stating that six of Hartford’s Legal Aid attorneys—or one-fifth—would be laid off in March 2008 in order to “shrink the office’s budget by 30 percent”). Thus, these legal providers have to operate more efficiently.

<sup>17</sup> But see Marcia Heroux Pounds, *Bankruptcy Filings Fall 19% in South Florida*, SUN-SENTINEL, Dec. 2, 2010, at 1D (stating that although filings are up 27% from the previous year, they have declined as compared to the previous month). The decrease is not because of an economic recovery but because many residents cannot afford to file. *Id.*

<sup>18</sup> Joseph E. Cordell, *Divorce May Be a ‘Discretionary Purchase,’* HUFFINGTON POST (Dec. 26, 2011), [http://www.huffingtonpost.com/joseph-e-cordell/divorce-may-be-a-discreti\\_b\\_1159299.html](http://www.huffingtonpost.com/joseph-e-cordell/divorce-may-be-a-discreti_b_1159299.html) (stating in general that a couple’s economic situation is a contributing factor).

<sup>19</sup> See SUSSKIND, *supra* note 6, at 238 (“In prosaic terms, we are in the realms of DIY law and legal self-service.”).

<sup>20</sup> Patrick J. Lamb, *Lawyers Have Incredible Lack of Interest in Changing Legal Marketplace*, A.B.A. J. (Nov. 9, 2010, 8:17 AM), [http://www.abajournal.com/weekly/article/incredible\\_lack\\_of\\_interest\\_in\\_the\\_changing\\_legal\\_marketplace?utm\\_source=maestro&utm\\_medium=email&utm\\_campaign=weekly\\_email](http://www.abajournal.com/weekly/article/incredible_lack_of_interest_in_the_changing_legal_marketplace?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email).

<sup>21</sup> See *id.* (“The firms that show they are serious about embracing alternative fee arrangements and implementing legal project management are getting a warm reception from prospective clients.”).

predictability, (4) improve communication, (5) offer alternative fee arrangements, and/or (6) implement legal project management.<sup>22</sup> These new objectives do not lend themselves toward the traditional lengthy new hire training process that was once a cost element absorbed by the end user of the legal services. In summary, clients now want, and even demand, the same level of quality legal services at rates that are market-driven rather than relationship based.<sup>23</sup>

Thus, lawyers and law firms must adjust to meet their clients' expectations. These adjustments have affected the hiring and retention practices across the board. Partnerships in law firms no longer guarantee a lifetime job because now individual productivity takes precedence in an effort to preserve firm profits.<sup>24</sup> Similarly, serving as in-house counsel for a corporation, both profit and non-profit, or a government agency, is no longer a "tenured" position. Government and corporate lawyers face the possibility of having their functions outsourced to private law firms if they cannot demonstrate that they are as, or more cost effective, than such firms.<sup>25</sup> Solo private practitioners are also at risk because they have to operate in a new environment where even less sophisticated clients are armed with information and alternatives for their basic legal needs.<sup>26</sup> The individual clients are unable to pay fees that cover on-the-job training. In other words, solo practitioners operate on a price-cap basis where profits, as opposed to revenue, are determined by their efficiency.<sup>27</sup> For example, if a client pays a set fee for a service, the profit or the effective hourly rate is determined by how efficiently the lawyer performs. Lawyers at all levels must now constantly demonstrate that retaining them for legal services is in the client's best economic interest. Blind loyalty to a lawyer or firm without regard to price is anachronistic. More law firms are rewarding lawyers based on year-to-year contributions to the bottom line rather than for having attained a certain level or status.<sup>28</sup> Thus, firms are promoting and encouraging non-equity tracks to retain talent without the

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<sup>22</sup> *Id.*

<sup>23</sup> Kummel, *supra* note 4, at 380 (explaining that law firm's focus on long-term client relationships now shifted to market-based mechanisms).

<sup>24</sup> Bernard A. Burk & David McGowan, *Big but Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy*, 2011 COLUM. BUS. L. REV. 1, 16–17 (2011).

<sup>25</sup> SUSSKIND, *supra* note 6, at 48; Danny Ertel & Mark Gordon, *Points of Law: Unbundling Corporate Legal Services to Unlock Value*, 90 HARV. BUS. REV. 126, 127, 129 (2012).

<sup>26</sup> See Burk & McGowan, *supra* note 24, at 78 (discussing clients armed with resources to manage their own costs and not engage in "one-stop legal shopping").

<sup>27</sup> See SUSSKIND, *supra* note 6, at 35 (describing how small firm costs are related to efficiency and standardization).

<sup>28</sup> See *Entry Level or Lateral Attorneys*, WILMERHALE CAREERS, <http://www.wilmerhalecareers.com/lawyers/lateralintegration/> (last visited Jan. 29, 2013) (describing a merit-based yearly compensation plan).

expectation of the traditional partnership reward.<sup>29</sup> Employers are also reevaluating what they expect from entry level lawyers by seeking not only young lawyers who speak the lingo, but also those who can do a certain level of legal work efficiently without extensive coaching; thus, being productive with limited supervision.<sup>30</sup> This is driven in part by the fact that paralegals and offshore, outsourced labor can do, for a cheaper price, the practical legal research that first-year associates used to do as a developmental exercise.<sup>31</sup>

Consequently, there is little need for relatively expensive, but inexperienced, associates and entry-level attorneys to perform simpler tasks that were the fundamental training ground of the past.<sup>32</sup> Instead, new attorneys are being expected to contribute to the more technical aspects of legal practice, such as litigation.<sup>33</sup> These new lawyers are expected to earn their salaries by performing tasks at a lower hourly rate than their more senior colleagues.<sup>34</sup> They are being transformed to lower level profit centers rather than cost centers, similar to the way paralegals are employed by the firms.<sup>35</sup>

The challenge for new graduates facing this reality is twofold: first, employers no longer have the luxury to train them in areas traditionally taught through mentoring and observation under the old environment; and second, clients do not want to bear the cost of training new hires.<sup>36</sup> Where the learning curve is great, solo practitioners are faced with on-the-job training; eating at their profits and effectively reducing their rates to something akin to minimum wages.<sup>37</sup> With the increased downward pressure on fees and the demand for offsetting increases in productivity, today's employers of young lawyers<sup>38</sup> can no longer offer employer-

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<sup>29</sup> See Burk & McGowan, *supra* note 24, at 33–35 (describing how firms reduce associate bonuses and condition means of advancement in an effort to tailor costs to low economic demand).

<sup>30</sup> See *id.* at 25 (describing how new associates are increasingly required to work on more monotonous tasks with less personal tutelage).

<sup>31</sup> SUSSKIND, *supra* note 6, at 47–48.

<sup>32</sup> Burk & McGowan, *supra* note 24, at 25.

<sup>33</sup> See SUSSKIND, *supra* note 6, at 46–47 (describing how lawyers can delegate technical services to less experienced lawyers).

<sup>34</sup> *What They Don't Teach*, *supra* note 5.

<sup>35</sup> U.S. DEP'T OF LABOR, *supra* note 10.

<sup>36</sup> *What They Don't Teach*, *supra* note 5; see also Cavazos, *Demands of the Marketplace Require Practical Skills*, *supra* note 3, at 7 (noting that clients refusing to pay for the training of associates creates a dilemma for supervising attorneys, forcing them to choose between public relations and revenue).

<sup>37</sup> See Anika Anand, *Law Grads Going Solo and Loving It*, NBCNEWS.COM (June 20, 2011), [www.nbcnews.com/id/43442917/ns/business-personal\\_finance/#.USLAPFp5Mto](http://www.nbcnews.com/id/43442917/ns/business-personal_finance/#.USLAPFp5Mto) (describing more law graduates becoming solo practitioners and training themselves through the use of online courses and supplemental business classes).

<sup>38</sup> See generally Zahorsky, *supra* note 11 (describing the mental processes of Big Law hiring partners).

sponsored mentoring or have clients pay for on-the-job training. This makes reliance on post-graduation basic skills training no longer feasible or realistic. Embracing a shift in the burden of initial practical and on-the-job-training from the employer to the law school presents a stellar opportunity for legal educators to step into the gap by preparing the nation's next generation of successful attorneys while preserving their own profession. New attorneys must be able to demonstrate competent skills and experience as soon as they are hired. The days of a long unspoken "apprenticeship" are over. Law schools that recognize and respond to this new market reality will flourish while those that do not will either fail or eventually become market followers.

Providing skill course training in law school is currently a competitive differentiator for some law schools and it will soon become a competitive necessity.<sup>39</sup> This prediction may be more imminent and applicable to the lower-tier law schools than the elite schools. However, Harvard Law School, which is consistently ranked in the top three of the law school ratings, has already taken steps to retain its high ratings and enhance its brand by taking significant steps to incorporate skills in its curriculum.<sup>40</sup>

#### B. *Over-Supply in the Legal Market*

Problems relating to the economy and inadequate training have shifted the demand of clients and have destabilized the market for attorneys. When the economy is stable and the need is growing, suppliers tend to jump on the bandwagon to fill the need.<sup>41</sup> Conversely, a down economy causes many college graduates to seek career changes, and law school is a prime target for those seeking such change. As such, many new law schools emerged during the economic boom, and continued to emerge during the recession. This translated into more individuals graduating from law schools, taking the bar, and becoming attorneys, thereby simultaneously creating a surplus when the demand fell.<sup>42</sup> It is true that there once was a time when being a lawyer virtually guaranteed job security, stability, and a

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<sup>39</sup> Scott Westfahl, *Response: Time to Collaborate on Lawyer Development*, 59 J. LEGAL EDUC. 645, 647–48 (2010).

<sup>40</sup> See Emily Newberger, *Theory and Practice: A Two-Way Street*, HARV. L. BULL. (Winter 2012), [http://www.law.harvard.edu/news/bulletin/2012/winter/feature\\_3-side2.php](http://www.law.harvard.edu/news/bulletin/2012/winter/feature_3-side2.php) (describing changes in teacher's methods after teaching longtime practitioners).

<sup>41</sup> See Mark Greenbaum, *No More Room at the Bench*, L.A. TIMES (Jan. 8, 2010), <http://articles.latimes.com/2010/jan/08/opinion/la-oe-greenbaum8-2010jan08> (describing how the legal sector has been saturated by oversupply from law schools). Mark Greenbaum is an attorney and writer in Washington. *Id.* But see Jack Crittenden et al., *Too Many Law Schools?*, NAT'L JURIST (Jan. 11, 2010, 3:00 PM), <http://www.nationaljurist.com/content/too-many-law-schools> (critiquing Greenbaum's argument and arguing a more optimistic view on the future of the legal market).

<sup>42</sup> Greenbaum, *supra* note 41.

decent lifestyle.<sup>43</sup> Those days are no longer. As in any goods or services consumer-driven market, when the supply exceeds the demand, the value of the product diminishes.

Layoffs and downsizing are the realities in today's legal world.<sup>44</sup> A 2010 survey in the *American Lawyer* reported that: (1) the majority of the survey respondents stated that their firms anticipate asking partners to leave; (2) a smaller percentage planned to de-equitize partners; and (3) more than 87% of firms indicated that the number of first-year associates hired next year will either decrease, or remain constant with 2010 figures or hiring patterns.<sup>45</sup> As it stands, there were one hundred fewer legal jobs in 2010 as compared to 2009.<sup>46</sup> Similarly, the economic crisis, state and federal cuts have also affected legal services organizations, resulting in attorneys being laid off nationwide. This financial impact has led to the reduction in litigation and the closing of legal services offices, resulting in most of these programs implementing hiring freezes and failing to fill open positions.<sup>47</sup> As a result, the poor are left to defend themselves.<sup>48</sup>

### C. Dim Prospects for Graduating Law Students: The Consumer

Too much supply in the face of decreased demand for legal services creates fewer opportunities for law school graduates to enter the market. An ABA Journal article portrayed a first-year law student contemplating the reality shared by many law students and graduates who were entering the current job market.<sup>49</sup> Upon completing law school, a graduate, on average, will have incurred approximately \$150,000 in debt, with no

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<sup>43</sup> Some schools have begun to reevaluate whether that lifestyle should be expected upon entering the profession. Martha Neil, *Stanford Law School Launches New Study of the Legal Profession*, A.B.A. J. (Dec. 9, 2010, 6:27 PM), [http://www.abajournal.com/news/article/stanford\\_law\\_school\\_launches\\_new\\_study\\_of\\_the\\_legal\\_profession/](http://www.abajournal.com/news/article/stanford_law_school_launches_new_study_of_the_legal_profession/) (noting that Stanford Law School will conduct a study "intended to help law firms and law schools understand what they need to do to retain their leadership role in a rapidly transforming legal industry").

<sup>44</sup> Debra Cassens Weiss, *BigLaw Partner Cuts Aren't Over, Survey Finds*, A.B.A. J. (Nov. 30, 2010, 7:45 AM), [http://www.abajournal.com/weekly/article/nearly\\_70\\_percent\\_of\\_biglaw\\_firms\\_plan\\_to\\_cut\\_partners\\_in\\_2011?utm\\_source=maestro&utm\\_medium=email&utm\\_campaign=weekly\\_email](http://www.abajournal.com/weekly/article/nearly_70_percent_of_biglaw_firms_plan_to_cut_partners_in_2011?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email).

<sup>45</sup> *Id.*

<sup>46</sup> *November Jobs Report Proves Disappointing*, NAT'L JURIST (Dec. 6, 2010, 10:56 AM), <http://www.nationaljurist.com/content/employment-insider/november-jobs-report-proves-disappointing>.

<sup>47</sup> Bill Cresenzo, *Legal Aid Society to Lay Off 20 Virginia Attorneys*, INSIDE BUS. (Jan. 13, 2012), <http://insidebiz.com/news/legal-aid-society-lay-20-virginia-attorneys>.

<sup>48</sup> *Id.*; see also Matt Katz, *Financial Crisis Crippling Legal Aid for Poor*, PHILA. INQUIRER (Sept. 27, 2008), <http://www.clsphila.org/Content.aspx?id=1187> (describing losses in IOLTA funds as responsible for hiring freezes at legal aid clinics).

<sup>49</sup> Martha Neil, *As IL Ponders Cost-Benefit Ratio of Dropping Out Now, ATL Survey Says: Do It*, A.B.A. J. (Nov. 30, 2010, 11:25 AM), [http://www.abajournal.com/weekly/article/As\\_IL\\_Ponders\\_Cost-Benefit\\_Ratio?utm\\_source=maestro&utm\\_medium=email&utm\\_campaign=weekly\\_email](http://www.abajournal.com/weekly/article/As_IL_Ponders_Cost-Benefit_Ratio?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email) (noting the pros and cons of seeking work as a paralegal for recent law school grads).

guarantee of a legal job that will afford him a salary sufficient to repay the debt.<sup>50</sup> Hence, the law student in the article considered dropping out of law school in his first year, already owing a debt of \$21,000.<sup>51</sup> The reasoning behind the decision was that “he will not only be better off financially, with far less to repay, but happier, since he won’t have to work as hard.”<sup>52</sup> About 80% of those surveyed supported the student’s idea to drop out of law school as his best route.<sup>53</sup> Of course, there was one response to the law student’s dilemma that “the 1L is interested in the money to be made as an attorney, rather than working as a client advocate.”<sup>54</sup> This view is somewhat naïve. Even those who want to put client advocacy ahead of financial concerns must face the age-old problem of needing to eat, pay bills, and repay school-related debt, which is typically much higher than it was in the past. The reality is that even jobs at not-for-profit agencies, such as legal aid, are becoming scarce.<sup>55</sup> Sadly enough, lawyers are even competing for support positions.<sup>56</sup> Even judges are staying on the bench longer as a result of the economic downturn, whereas before, they would have left to earn substantially higher incomes at private firms.<sup>57</sup>

Further, the United States Department of Labor (“DOL”) issued a grim overview of the legal profession in their 2010–2011 Occupational Outlook Handbook, confirming what many law graduates are saying.<sup>58</sup> The handbook noted that some graduates may have to work outside of their field of interest or in positions for which they are overqualified, while others will turn to temporary legal staffing agencies to be “as-needed” attorneys.<sup>59</sup> However, at least those “as-needed” attorneys will be gaining practical skills, whereas others, who have no employment, will not.<sup>60</sup>

Law school graduates and attorneys are incensed about the current job

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> See, e.g., Katz, *supra* note 48 (describing how legal aid funding for lawyers has disappeared in mid-atlantic states).

<sup>56</sup> See Martha Neil, *Paralegal Job Can Make Career Sense, but Document Review Is Dubious, Experts Advise*, A.B.A. J. (Dec. 7, 2010, 7:16 PM), [http://www.abajournal.com/weekly/article/it\\_can\\_make\\_career\\_sense\\_to\\_take\\_a\\_paralegal\\_job\\_but\\_avoid\\_document\\_review?utm\\_source=maestro&utm\\_medium=email&utm\\_campaign=weekly\\_email](http://www.abajournal.com/weekly/article/it_can_make_career_sense_to_take_a_paralegal_job_but_avoid_document_review?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email).

<sup>57</sup> Debra Cassens Weiss, *Judges Make List of Top 10 High-Paying Jobs with No Future*, A.B.A. J. (Nov. 29, 2010, 7:26 AM), [http://www.abajournal.com/weekly/article/judges\\_make\\_list\\_of\\_top\\_10\\_high-paying\\_jobs\\_with\\_no\\_future?utm\\_source=maestro&utm\\_medium=email&utm\\_campaign=weekly\\_email](http://www.abajournal.com/weekly/article/judges_make_list_of_top_10_high-paying_jobs_with_no_future?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email).

<sup>58</sup> U.S. DEP’T OF LABOR, *supra* note 10. “Competition for job openings should continue to be keen because of the large number of students graduating from law school each year.” *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

market or lack thereof.<sup>61</sup> Many are turning to blogs to vent and “warn” prospective students of the pitfalls of receiving and paying for a costly legal education.<sup>62</sup> Some are even filing lawsuits against their law schools on the grounds of misrepresentation of employment rates.<sup>63</sup> They are no longer tolerating what they believe are misleading or inflated statistics about job placements or salaries.<sup>64</sup> This perception is based on the idea that in law school, students procure a legal education that will have both financial and social value upon graduation.<sup>65</sup> The law student traditionally seeks to increase his knowledge and earning potential and, in turn, expects a return on his law school investment as measured by the ability to obtain a job or otherwise employ his legal skills.<sup>66</sup> The bottom line is that today an expectation of an economic return on a legal educational investment is no longer realistic.<sup>67</sup>

#### D. *Analysis of Law Schools as Suppliers*

Students have demonstrated a willingness to pay for law school in hope of a return on their investment. In the last few years, legal education costs have risen substantially, causing an increase in student debt and an increase in career choices.<sup>68</sup> A report by the U.S. Governmental Accountability Office (“GAO”) stated that debt burdens at graduation have risen significantly since 2001.<sup>69</sup> The study determined that the two main

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<sup>61</sup> *Id.*

<sup>62</sup> See *Farewell to Inside the Law School Scam*, ABOVE THE LAW (Feb. 28, 2013), <http://abovethelaw.com/2013/02/farewell-to-inside-the-law-school-scam/> (discussing the blog known as *Inside the Law School Scam*). This blog aims to expose the oversupply of lawyers and how that oversupply has been caused by bogus employment and income/salary statistics used by most law schools to induce applicants to apply to law schools. *Id.*

<sup>63</sup> Joe Palazzolo & Jennifer Smith, *Corporate News: Law Grads Claim Schools Misled*, WALL ST. J., Feb. 2, 2012, at B4.

<sup>64</sup> *Id.*; see also THIRD TIER REALITY, <http://thirddtierreality.blogspot.com/> (last visited Jan. 15, 2013). Third Tier’s Objective is as follows:

This blog is maintained by a recent law school graduate from a third tier school. My goal is to educate prospective law students about the perils of obtaining a legal education. There are many pitfalls—the debt load, the oversupply of lawyers, the fact that there are not enough legal jobs to satisfy nearly 45,000 annual law graduates, and the reality that the majority of law school graduates will end up with low-paying jobs upon completion of their “legal studies.”

*Id.*

<sup>65</sup> Annie Lowrey, *How Law School Went from Being a Sure Thing to a Bum Deal*, WASH. POST, Oct. 31, 2010, at G4.

<sup>66</sup> *Id.*

<sup>67</sup> Judith Welch Wegner, *Response: More Complicated than We Think*, 59 J. LEGAL EDUC. 623, 628 (2010).

<sup>68</sup> *Id.* at 629.

<sup>69</sup> *Id.* “[T]he U.S. Governmental Accountability Office (GAO) [has] track[ed] tuition and fee hikes at American law schools since 1994.” *Id.*

sources of increased costs were the “hands-on, resource-intensive instruction and efforts to compete in national rankings.”<sup>70</sup>

The expansion of hands-on resource-intensive instruction included: (1) “enhanced academic support, career services, and similar activities”; (2) “small advanced electives in such fields as international and environmental law”; and (3) “expanded clinical and skills offerings.”<sup>71</sup> As noted in this Article, ABA accreditation requires “hands-on instruction in lawyering skills and academic support programs to foster retention and steadily improve bar passage rates.”<sup>72</sup> This type of instruction is relatively expensive to deliver on a per student basis due to the requirement for close supervision by faculty, necessitating low student-faculty ratios. Law schools have attempted to offset the additional costs by hiring non-tenure-track instructors at salaries that are lower than traditional tenure-track salaries. This has not been the same strategy employed in the effort to attract talented students through specialty-track offerings. Thus, through their actions, law schools have artificially exalted specialty-track programs over clinical programs for revenue purposes rather than responding to the demands of the marketplace.

In this regard, law school revenue increases at the expense of students. These specialty-track offerings are nothing more than marketing gimmicks that have a disproportionately deleterious impact on law graduates at second tier and below law schools, as few graduates will be hired based on having taken a specialty course or courses. Nevertheless, for this purpose, law schools vie to recruit top faculty members commanding significantly higher salaries than those teaching practical skills.<sup>73</sup> This is akin to what has happened in corporate America, where the relevant question is the price of stock rather than the quality or success of the product or service. In this connection, law schools are providing practical skill training courses for the event—checking the proverbial box rather than the result—ensuring a base level of practice skills competency for graduates. On the other hand, specialty programs are being provided for the result, attracting more students with false promises.

The competitiveness between law schools for “high *U.S. News & World Report* rankings has fueled increased expenditures, for example, in raising per-student expenditures, lowering student-faculty ratios, improving and improving library resources.”<sup>74</sup> *U.S. News & World Report* uses the data the ABA mandates as essential components to compile its

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<sup>70</sup> *Id.* (internal quotation marks omitted).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 629–30.

<sup>73</sup> *Id.* at 629.

<sup>74</sup> *Id.*



yearly rankings.<sup>75</sup> It can be said that all of these factors are related to ABA requirements.<sup>76</sup> Unfortunately, while specialty curriculum may enhance some law school rankings, “ABA reporting requirements have devalued contributions by [less expensive] non-tenure-track faculty (such as adjuncts from practice and some clinical and legal writing faculty members).”<sup>77</sup> This outcome, rather than results-driven incentives, creates the irony that hands-on practical training—the very offering that could make graduate more attractive in the job market and protect legal service consumers from entry level incompetent practitioners—is also a prime factor in the failure of law schools to adequately prepare graduates for the marketplace.

The ABA recognized the disconnect between legal education and the actual practice of law as far back as the 1992 MacCrate Report.<sup>78</sup> The Report stressed that law schools had to reinstate lawyering skills into the curriculum.<sup>79</sup> Those fundamental skills included “problem-solving, legal analysis, legal research, factual investigation . . . alternative dispute resolution,” identification of the administrative skills necessary to organize and manage legal work effectively, legal drafting, basic communication, counseling, negotiation, strategic deployment of the options of litigation, and recognizing and resolving ethical dilemmas.<sup>80</sup>

Surveys mentioned in the twenty-year-old Report indicated that most lawyers believed their law school education was inadequate and increasingly irrelevant to their needs as practicing lawyers, as they felt that they were not properly prepared to practice immediately after completing law school.<sup>81</sup> In response to the Report, law schools supplemented their course offerings with an array of specialty programs, classes, and clinics. They also added practical skills courses such as alternative dispute resolution, contract drafting, client interviewing, counseling, and negotiation.<sup>82</sup> These courses, while a step in the right direction, typically involve highly controlled mock scenarios in the classroom rather than

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<sup>75</sup> *Id.* at 629–30.

<sup>76</sup> *Id.* at 629. “ABA accreditation requirements were, surprisingly, not viewed as significantly increasing costs among legal educators (who were much more focused on the effects of the *U.S. News* rankings).” *Id.*

<sup>77</sup> *Id.* at 629–30.

<sup>78</sup> MACCRATE REPORT, *supra* note 7, at 330–34.

<sup>79</sup> *Id.* at 327; see WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 17–18 (Jossey-Bass 2007) (analyzing various elements of law school education); see also Ann Marie Cavazos, *Demands of the Marketplace Require Practical Skills*, *supra* note 3, at 1 (advocating for the implementation of mandatory clinical work for law students that will benefit local, underrepresented clients).

<sup>80</sup> Cavazos, *Demands of the Marketplace Require Practical Skills*, *supra* note 3, at 8–9, 12.

<sup>81</sup> MACCRATE REPORT, *supra* note 7, at 5.

<sup>82</sup> See Cavazos, *Demands of the Marketplace Require Practical Skills*, *supra* note 3, at 8 (noting the practical skills (problem solving, legal analysis, etc.) that were suggested by the MacCrate Report as being important for a practicing attorney).

actual client contact, which narrowed, but still preserved, the gap in legal education pedagogy and the graduation of competent lawyers.<sup>83</sup>

The next logical phase to further close this gap, in the evolution of legal education, is to acknowledge the importance of graduating a student who is already capable of practicing law.<sup>84</sup> Pervasive clinical training, integrated from first year into the core law school curriculum, must replace the old model of learning on the job.

Current legal clinical programs offer second, third and fourth-year law students basic skills training in various areas of law. However, only a small percentage of students typically enroll in these programs, despite the stated goal of law schools to prepare law students to be competitive in the job market and to be competent practitioners.<sup>85</sup> Another drawback is that in their current form, clinical programs cannot typically accommodate large numbers of law students without significant funding and support from the ABA, faculty, and administration. This economic concern must be weighed against the benefit to law students, who could reap greater advantage from being immersed in practical skills from day one of law school, and the consumer who requires their legal services. The role of the ABA is to protect consumers from incompetent lawyers.<sup>86</sup> One function of the ABA, as regulator, should be to mandate that a portion of the curriculum be skill-based.<sup>87</sup> Currently, the ABA requires a two-year residency requirement for graduation.<sup>88</sup> This requirement assures that the

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<sup>83</sup> While practical skills learned in a classroom may be valuable, “[t]he kind of judgment that enables competent decision making in legal scenarios must be experienced through real practical issues,” and this exposure is the primary purpose of legal clinical programs. *Id.* at 9, 12.

<sup>84</sup> For example, Harvard Law School has taken such steps to train students to be capable of practicing law upon graduation through the introduction of a diverse curriculum. According to their website, they “offer[] students a curriculum of unparalleled breadth: more than 400 courses, seminars, and reading groups that together reflect the remarkable range of the faculty’s expertise and interests.” *Curriculum*, HARV. L. SCH., <http://www.law.harvard.edu/academics/curriculum> (last updated Nov. 26, 2012).

<sup>85</sup> See *What They Don’t Teach*, *supra* note 5 (“A soon-to-be-released study of clinical programs by the Center for the Study of Applied Legal Education found that only 3 percent of law schools required clinical training.”).

<sup>86</sup> See generally AM. BAR ASS’N, COMM’N ON EVALUATION OF DISCIPLINARY ENFORCEMENT (1989–1992), available at [http://www.americanbar.org/groups/professional\\_responsibility/resources/report\\_archive/mckay\\_report.html](http://www.americanbar.org/groups/professional_responsibility/resources/report_archive/mckay_report.html) (discussing the regulation of the legal profession and the importance of disciplinary enforcement).

<sup>87</sup> Currently, however, the ABA does not mandate a skill-based curriculum. See AM. BAR ASS’N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, STANDARDS: RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 20 (2005), available at [http://www.forumea.org/toolboxdocs/Standards-Rules\\_of\\_Procedure\\_for\\_Approval\\_of\\_Law\\_Schools\\_2005-2006\\_by\\_ABA.pdf](http://www.forumea.org/toolboxdocs/Standards-Rules_of_Procedure_for_Approval_of_Law_Schools_2005-2006_by_ABA.pdf). According to interpretation 302-4 of Standard 302 regarding curriculum, “[a] law school need not accommodate every student requesting enrollment in a particular professional skills course.” *Id.* This suggests that the ABA does not mandate skill-based curriculum.

<sup>88</sup> James P. White, *History of the Administration of the American Law School Accreditation Process*, 51 J. LEGAL EDUC. 438, 439–40 (2001); see also AM. BAR ASS’N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 87, at 21 (ABA Standard 304 (c) states, “A law school shall

quality of law school training and competency is not impaired by students carrying overloads and unduly accelerating their graduations. Therefore, mandating clinics and practical and technical skills training courses from the inception of the law student's studies are more of a necessity to assure competency of the graduates.<sup>89</sup>

An enhanced clinical training methodology integrated into the core curriculum would emphasize start-to-finish client management for legal matters. This encompasses practical skills in conducting client intake: interviewing a client to determine legal needs; performing the necessary work; reviewing the issues and progression of the case with the client; and closing out the matter. In addition, participating in these activities will help develop a student's professional judgment by complementing the critical thinking and analysis developed through traditional law school pedagogy.<sup>90</sup> Another benefit is that it would allow students to see and participate in the practical application of the theoretical material learned in lecture, and therefore, make it more likely that the students remain engaged through the richer "hands-on" learning experience. This addition of the hands-on "lab experience" to the more linear lecture would appeal to more students by providing a different mode of learning and critical thinking, thus propelling law schools to the mainstream of pedagogical thinking.<sup>91</sup>

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require that the course of study for the J.D. degree be completed no earlier than 24 months and no later than 84 months after a student has commenced law study at the law school or a law school from which the school has accepted transfer credit.").

<sup>89</sup> See *What They Don't Teach*, *supra* note 5 (Segal noted that "[w]hat [law students] did not get, for all that time and money, was much practical training. Law schools have long emphasized the theoretical over the useful, with classes that are often overstuffed with antiquated distinctions, like the variety of property law in post-feudal England," and, Jeffrey W. Carr, general counsel for FMC Technologies, stated, "The fundamental issue is that law schools are producing people who are not capable of being counselors . . . they aren't ready to be a provider of services."); see also Cavazos, *Demands of the Marketplace Require Practical Skills*, *supra* note 3, at 8 (noting that "[o]ver the last fifty years, a growing number of members of the legal academy have recognized the need for clinical education to adapt to a changing marketplace" and that there is an interest in instilling young lawyers with the necessary skills to be effective).

<sup>90</sup> The traditional law school pedagogy is the Socratic Method. Jeffrey D. Jackson, *Socrates and Langdell in Legal Writing: Is the Socratic Method a Proper Tool for Legal Writing Courses?*, 43 CAL. W. L. REV. 267, 267 (2007). Christopher Columbus Langdell, former Dean of Harvard Law School, believed that law should be taught as a science, which is why he introduced the case method of law study whereby students learned the law by reading and discussing cases to extract the scientific legal principles. Langdell partnered this case method with the "Socratic method," which consisted of having a student analyze each of the cases and then asking a series of questions designed to draw out the legal content of the case in an attempt to "foster analytical skills, encourage independent learning, and provide students with the opportunity to practice and refine verbal and rhetorical skills." *Id.* at 270 (quoting Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449, 455 (1996)).

<sup>91</sup> See Astrid Brinkmann, *Graphical Knowledge Display-Mind Mapping and Concept Mapping as Efficient Tools in Mathematics Education*, 16 MATHEMATICS EDUC. REV. 35, 38 (2003) ("[T]he special technique of mind mapping, which uses both sides of the brain and has them working together, is of benefit to mathematical thinking, which takes place in both sides of the brain."); Ann Marie Cavazos,

Not only would this next phase of legal education address the economic pressures plaguing the profession, it would also serve to ameliorate the view that law schools have become an industry which churns out incompetent law graduates at a high rate, causing disastrous ramifications by oversupplying the market with unemployable lawyers.<sup>92</sup> The threat of lawsuits brought by graduates who feel they were duped into attending law school by rosy promises of high-paying jobs, as well as the broad news coverage of high-achieving law school graduates who cannot find jobs, create a public relations disaster. This type of publicity affects the public's perception of law schools and, consequently, the legal profession. It could also lead to investigations of fraud and misrepresentation, including exposure related to acceptance of federal student financial aid.

Law schools and the ABA can no longer afford to ignore these problems that plague legal education.<sup>93</sup> Focusing on providing practical skills training, the kind expected in the marketplace, may be the most rational choice for today's law schools as a means for basic long-term survival. The cost of failing to address this need may well pale in comparison to the downstream costs related to continuing the status quo.

Some may argue that many students who attend law school are not really interested in practicing law and should not be subjected to practicum

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*The Journey Toward Excellence in Clinical Legal Education: Developing, Utilizing and Evaluating Methodologies for Determining and Assessing the Effectiveness of Student Learning Outcomes*, 40 SW. L. REV. 1, 6 (2010) [hereinafter Cavazos, *The Journey Toward Excellence in Clinical Legal Education*] ("Other professionals, such as physicians and dentists, utilize a combination of academic study along with practicum experience . . . . [I]ncorporating a blended methodology into legal education provides a balanced solution to the expectation currently demanded by today's marketplace."); Kirsten A. Dauphinais, *Valuing and Nurturing Multiple Intelligences in Legal Education: A Paradigm Shift*, 11 WASH. & LEE RACE & ETHNIC ANC. L.J. 1, 2 (2005) (arguing that a "more expansive approach to recognizing and evaluating student capabilities could help us to provide a better legal education in several arenas").

<sup>92</sup> See Cavazos, *Demands of the Marketplace Require Practical Skills*, *supra* note 3, at 8 ("There were some clinicians who believed that the then current legal education would churn out lawyers that had earned the right to be the butt of lawyer jokes—professionals who cared only about the bottom line: the money.").

<sup>93</sup> Clinical education has been one avenue utilized to integrate practical skills and social justice. Nevertheless, like any change, law schools have resisted the ABA accreditation standard:

[It] requires law schools to establish long-term employment relationships with clinical faculty and provide them with a meaningful voice in law school governance. By integrating clinical faculty into law schools, the ABA aims to advance the value of clinical legal education and the professional skills and values that it promotes. . . . Despite these trends, a recent decision by the ABA Accreditation Committee approving short-term contracts and the denial of meaningful participation in faculty governance for clinical faculty, demonstrates that the debate over the value of clinical legal education and the appropriate status for its faculty continues.

Peter A. Joy & Robert R. Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN. L. REV. 183, 183 (2008).

courses. However, this fact should not dictate the curriculum for those who do intend to practice. Moreover, the skill training that is being advocated in this Article is beneficial to all graduates, irrespective of how he or she chooses to use a law degree.

### III. LESSONS FROM THE PAST: A HISTORY OF THE EVOLUTION OF LEGAL EDUCATION TO MEET MARKETPLACE DEMANDS

During the colonial era, formal legal education was practically nonexistent. The only types of legal training were the British Model of Inns of Court, self-instruction, and apprenticeship.<sup>94</sup>

#### A. *Inns of Court: Legal Education for Barristers*<sup>95</sup>

"In 1292, King Edward I issued a royal edict to his judges of the common bench to find and select [competent] students . . . to learn the business of the courts."<sup>96</sup> Students were simply required to assemble at and attend the courts in Westminster and to listen to the discussion of the cases.<sup>97</sup> The tyros of the Court often gathered at a few select dwelling places and soon after began to formalize, establishing what is known as the Inns of Court ("Inns"), a step towards formal legal education.<sup>98</sup>

The Inns evolved when "masters" (men experienced in litigation) were employed to lecture to students at these dwellings.<sup>99</sup> Practitioners also became affiliated at these Inns.<sup>100</sup> Thereafter, "control of the Inns soon passed from the hands of the putative employers, the students, to those of the teachers, the masters."<sup>101</sup> These masters were then called "benchers" and the students were classified into three categories: inner barristers, outer barristers, and readers.<sup>102</sup> New students were inner barristers whose formal legal education consisted mainly of lecture and observation.<sup>103</sup> Outer barristers were similar to second year law students who were required to participate in the moots.<sup>104</sup> Readers were similar to today's teaching

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<sup>94</sup> Douglas, *supra* note 2, at 187.

<sup>95</sup> The General Council of the Bar ("Bar Council") is the Approved Regulator of the Bar of England and Wales, and provides information about the training and education involved in becoming a Barrister. *How to Become a Barrister*, BAR COUNCIL, <http://www.barcouncil.org.uk/> (last visited Feb. 20, 2013).

<sup>96</sup> Ralph Michael Stein, *The Path of Legal Education from Edward I to Langdell: A History of Insular Reaction*, 57 CHI.-KENT L. REV. 429, 430 (1981).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 430–31.

<sup>103</sup> *Id.* at 431.

<sup>104</sup> *Id.*

assistants, as they were experienced students employed in instruction.<sup>105</sup> This was the barrister's method of education, which was exclusively for those with high society connections.<sup>106</sup> There were four prominent Inns: The Honorable Society of Gray's Inn, The Honorable Society of Lincoln's Inn, The Honorable Society of the Middle Temple, and The Honorable Society of the Inner Temple.<sup>107</sup> However, few students in the colonies could afford to travel to England and undertake the barrister's method of legal education at the Inns.<sup>108</sup> The costs of travel and lack of proper legal instruction made this method of training imprudent.<sup>109</sup> Furthermore, some scholars state that the Inns lost reputability as a means of legal education during the eighteenth century.<sup>110</sup>

### B. *Self-Instruction Method of Legal Education*

The self-instruction method meant that the student would teach himself by reading law books.<sup>111</sup> This method of education was very expensive since books were costly and not readily available.<sup>112</sup> In 1769, Thomas Jefferson commented on this serious problem, stating: "[A] lawyer without books would be like a workman without tools."<sup>113</sup> Another problem with the law books was that reading and understanding them was difficult.<sup>114</sup> Even legal treatises failed in "providing the necessary technical command of court practice" for emerging lawyers.<sup>115</sup>

### C. *Apprenticeship*

The most accepted mode of legal education was the apprenticeship.<sup>116</sup> Some colonies even mandated this legal training for admittance to the

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<sup>105</sup> *Id.* at 430–31.

<sup>106</sup> *See id.* at 434 n.22 (remarking that the Inns of Court became known as educational havens for social elites).

<sup>107</sup> *Id.* at 430.

<sup>108</sup> Douglas, *supra* note 2, at 188.

<sup>109</sup> *See id.* at 188–89 (observing that—beyond colonists' financial obstacles to studying at the Inns—there had been "a serious deterioration in the quality of their legal training by the eighteenth century" and that "lectures and moot courts . . . had largely ceased").

<sup>110</sup> *See id.* at 188 (noting that by the eighteenth century the Inns had "degenerated into little more than dining clubs with no educational value" (quoting Charles R. McKirdy, *The Lawyer as Apprentice: Legal Education in Eighteenth Century Massachusetts*, 28 J. LEGAL EDUC. 124, 126 (1976))).

<sup>111</sup> *Id.*

<sup>112</sup> *See id.* at 189 ("Law books were quite expensive . . . . Public libraries were unknown in colonial America, and college libraries contained few law books.").

<sup>113</sup> *Id.* (quoting Letter from Thomas Jefferson to Thomas Turpin (Feb. 5, 1769), in 1 THE PAPERS OF THOMAS JEFFERSON 23, 24 (Julian P. Boyd ed., 1950)).

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *See id.* at 190 ("The apprenticeship method would remain the dominant method of legal training in America until the second half of the nineteenth century.").

bar.<sup>117</sup> For example, in 1767, New York required a three-year apprenticeship with a practicing attorney if the student had a college education, or a five-year apprenticeship for those without a college degree.<sup>118</sup> Like other forms of legal education, the apprenticeship method had both positive and negative attributes. It consisted of interacting with the practicing attorneys, reading legal treatises, transcribing legal documents, and attending court.<sup>119</sup> Central to apprenticeship was that a fee was charged to either the student or the student's family, which could range from the typical \$100 to \$200, or as much as \$500.<sup>120</sup> One of the main problems with this method was that many students spent a disproportionate part of their time copying documents instead of actually learning the law.<sup>121</sup> Adding to this problem, mentors did not have time or did not make the time to teach their protégés the law.<sup>122</sup> As so eloquently stated by law student William Livingston, who was an apprentice of James Alexander<sup>123</sup>:

[A]n outrage upon common honesty, a conduct scandalous, horrid, base, and infamous to the last degree! These gentlemen must either have no manner of concern for their clerk's future welfare and prosperity, or must imagine, that he will attain to a competent knowledge in the Law, by gazing on a number of books, which he has neither time nor opportunity to read; or that he is to be metamorphos'd into an attorney by virtue of Hocus Pocus.<sup>124</sup>

Although many found the training useful, others believed that it was imperative to have exposure to legal principles and theory and not just the

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<sup>117</sup> *Id.* at 189.

<sup>118</sup> *Id.* at 189–90.

<sup>119</sup> *Id.* at 190.

<sup>120</sup> *Id.*

<sup>121</sup> *See id.* (“In an age before printed forms and typewriters, it was a rare clerk indeed who didn’t spend a good deal of his time bent over a desk copying writs and declarations.” (quoting Charles R. McKirdy, *The Lawyer as Apprentice: Legal Education in Eighteenth Century Massachusetts*, 28 J. LEGAL EDUC. 124, 128 (1976))).

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 191 & n.31. James Alexander was a lawyer and statesman in colonial New Jersey and New York. *See* Biographical Note, *Guide to the James and William Alexander Papers*, N.J. HIST. SOC’Y, <http://www.jerseyhistory.org/findingaiddirmb.php?dir=EAD/faid0500&aid=mg0070> (last visited Jan. 28, 2013) (noting that James Alexander was “a member of the provincial bar and [A]ttorney [G]eneral of New Jersey,” as well as “a member of the Councils of New York and New Jersey”).

<sup>124</sup> Douglas, *supra* note 2, at 191 (quoting CHARLES WARREN, A HISTORY OF THE AMERICAN BAR 168 (1911)).

rudimentary and technical aspects.<sup>125</sup>

After the Revolutionary War, lawyers were required to take oaths to the recently formed nation; however, many practitioners refused because they were loyal to the British monarch.<sup>126</sup> This affected the number of lawyers in America, as some fled and others could not be trained under the apprenticeship method for lack of mentors.<sup>127</sup> Nevertheless, this method lasted well into the mid-1800s.<sup>128</sup> During the latter part of this period, a new pedagogy was emerging as formalized legal education.

#### IV. FORMAL LEGAL EDUCATION

In 1793, the first law degree was awarded in the United States by the College of William and Mary in the Commonwealth of Virginia.<sup>129</sup> Thomas Jefferson strongly believed that our new nation “needed virtuous leaders who would place the public interest above their own private interest.”<sup>130</sup> This belief was carried out in his paradigm for legal education at the College of William & Mary in the early 1780s.<sup>131</sup> George Wythe,<sup>132</sup> professor at William & Mary, implemented Jefferson’s legal education vision of training lawyers in the university setting, which was later adopted by other colleges.<sup>133</sup> In 1779, George Wythe was appointed chair of “Law and Police” at William & Mary.<sup>134</sup> He is generally recognized as “America’s first law professor.”<sup>135</sup> The Jeffersonian vision ensued in a remarkable matriculation that included: Chief Justice of the U.S. Supreme Court John Marshall; Associate Supreme Court Justice Bushrod

<sup>125</sup> *Id.* Both American and British legal minds coincided on this point. *See id.* (“Leading English legal scholars made similar arguments, urging aspiring lawyers to gain an understanding of the larger philosophical issues in law in addition to the nuances of proper pleading.”).

<sup>126</sup> *See id.* at 192 (“Many Tory lawyers who remained in the colonies faced loyalty oaths, which further depleted the ranks of the profession.”).

<sup>127</sup> *See id.* (“After the Revolution, widespread dissatisfaction with the training of lawyers remained. . . . [M]any [attorneys], often the most able in the profession, fled the colonies out of loyalty to the crown.”).

<sup>128</sup> *Id.* at 190.

<sup>129</sup> *Id.* at 205.

<sup>130</sup> *Id.* at 185.

<sup>131</sup> *Id.* at 185–86.

<sup>132</sup> *Id.* at 186 n.4 (“Wythe’s teaching career may be assessed . . . as consequential beyond comparison to that of any successor in American university law teaching.” (alteration in original) (quoting Paul D. Carrington, *The Revolutionary Idea of University Legal Education*, 31 WM. & MARY L. REV. 527, 538 (1990))).

<sup>133</sup> Douglas, *supra* note 2, at 185–86. With new ideas, there are critics and skeptics, and this Jeffersonian vision at William and Mary was no exception. *See id.* at 186 n.3 (examining Harvard Dean Roscoe Pound’s dismissal of early efforts at university-based legal education); *see also* Cavazos, *Demands of the Marketplace Require Practical Skills*, *supra* note 3, at 1 (examining the importance of clinics in modern evolution of legal education).

<sup>134</sup> Andrew M. Siegel, Note, “To Learn and Make Respectable Hereafter”: *The Litchfield Law School in Cultural Context*, 73 N.Y.U. L. REV. 1978, 2022 (1998).

<sup>135</sup> *Id.* at 2022–23.



Washington; Attorney General of the United States John Breckinridge; U.S. Senators: James Brown, Louisiana; John Brown, Kentucky; John Eppes, Virginia; Buckner Thruston, Kentucky; Governors of Virginia: William Branch Giles, Wilson Cary Nicholas, and Littleton Waller Tazewell.<sup>136</sup> Professor Wythe's legal educational program, as envisioned by Jefferson, "afforded a broad understanding of political theory, modern and ancient history, moral philosophy," and encompassed "the details of legal doctrine and the nuances of proper pleading."<sup>137</sup> Within the next decades, several other legal educational programs began throughout the new nation.

In 1790, U.S. Supreme Court Justice James Wilson established a three-year course based on historical and comparative examinations of law for students to "engage in the art of government"<sup>138</sup> at the College of Philadelphia. Emphasis was given to the political economy and moral philosophy under which the branch of law existed.<sup>139</sup> Unfortunately, his pedagogy was unpopular and the program ceased before the second year of implementation ended.<sup>140</sup> In 1793, New York's Columbia College had also started a legal educational program focusing on constitutional law under the professorship of James Kent, whose philosophy on legal education was similar to that of Jefferson and Wythe.<sup>141</sup> "In 1799 Transylvania University in Lexington, Kentucky, appointed a William and Mary graduate, George Nicholas, professor of law and politics," who continued the William & Mary tradition of offering students broad training in law and political theory, moot courts, and mock legislatures.<sup>142</sup>

From 1795 to 1812, Princeton offered an undergraduate program of law in the subjects of jurisprudence, politics, and public law (the law of nature and nations).<sup>143</sup> By the early nineteenth century, these legal educational programs were not alone, as other colleges in Indiana and Ohio

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<sup>136</sup> Douglas, *supra* note 2, at 186 n.4. This list is not exhaustive, as many members of the U.S. House of Representatives and twenty-five of the forty-three Judges on the Virginia Court of Appeals before the Civil War received their legal education at William and Mary. *Id.*

<sup>137</sup> *Id.* at 185.

<sup>138</sup> *Id.* at 207.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 207–08. Kent's first year of lecturing was before forty-three students, mostly members of the bar. *Id.* at 208.

After the first year, in 1795, he had only two students, and within each of the following three years he taught no more than eight. *Id.* Kent resigned in 1798 to become a judge. *Id.* Kent was a professor at Columbia from 1793–1798 and from 1823–1826. *Id.* at 207. In the late 1820s, Kent produced the four-volume *Commentaries* on American law which turned out to be his most significant influence on legal education. *Id.* at 208.

<sup>142</sup> *Id.* at 208.

<sup>143</sup> *Id.* at 209. Lectures were given by Princeton's President, Samuel S. Smith. *Id.*

were also teaching law.<sup>144</sup> Yale began a type of legal program in the 1770s,<sup>145</sup> and by 1801, Yale had refined its program to encompass:

[L]ectures on the leading principles of the Law of Nature and Nations, on the general principles of civil government, particularly of Republican representative government, on the Constitution of the United States and of the State of Connecticut . . . and on the various obligations and duties resulting from the social relations, especially those which arise from our own National and State Governments.<sup>146</sup>

Reconstruction, one of the most turbulent and controversial eras in American history, began during the Civil War and ended in 1877.<sup>147</sup> There are two law schools that merit recognition for their tenets that set them apart from other law schools of this historical era. The University of Michigan Law School was founded in 1859, and had a liberal admission policy unlike most law schools of that era.<sup>148</sup> By 1870, Michigan Law became the second American university to confer a law degree on an African American, Gabriel Hargo, and was the first major law school to admit a woman.<sup>149</sup> In 1871, Sarah Killgore graduated with a law degree, and became the first woman with a law degree in the United States to be admitted to the bar,<sup>150</sup> and “by 1890, Michigan had graduated more women than any other law school.”<sup>151</sup> The second school deserving recognition is Howard University School of Law, founded in 1869.<sup>152</sup> The school’s pledge was to train lawyers “who would have a strong commitment to helping black Americans secure and protect their newly established rights.”<sup>153</sup> This school had examined the unmet needs of the marketplace and designed a program to meet those requirements.

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<sup>144</sup> *Id.* The purpose of these programs was “creating a corps of potential leaders appreciative of the need for self-restraint in the practice of democratic self-government.” *Id.* (quoting Paul D. Carrington, *Legal Education for the People: Populism and Civic Virtue*, 43 U. KAN. L. REV. 1, 6 (1994)).

<sup>145</sup> Douglas, *supra* note 2, at 208.

<sup>146</sup> *Id.* at 208–09.

<sup>147</sup> *Overview of Reconstruction*, DIGITAL HIST., <http://www.digitalhistory.uh.edu/reconstruction/introduction.html> (last visited Jan. 21, 2013).

<sup>148</sup> *About Us*, UNIV. OF MICH. L. SCH., <http://www.law.umich.edu/aboutus/Pages/default.aspx> (last visited Jan. 21, 2013).

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *History*, HOWARD UNIV. SCH. OF LAW, <http://www.law.howard.edu/19> (last visited Jan. 21, 2013).

<sup>153</sup> *Id.*

### A. *Supplementing Formal Legal Education*

Even with formal education, law students early on acknowledged the importance of technical and practical skills to the emerging lawyer.<sup>154</sup> Notwithstanding proficient formal education, some astute graduates of William & Mary supplemented their legal education with apprenticeships.<sup>155</sup> As such, in the latter part of the eighteenth century, apprenticeships in law offices were the most common legal training, even though there were alternatives in the form of formal legal education and propriety schools.<sup>156</sup>

### B. *Private Proprietary Law Schools*

During the 1780s, there was a new pedagogy for legal education that emphasized the practice of law, in contrast to the established schools whose programs incorporated the practice of law and political leadership with emphasis placed on the Constitution.<sup>157</sup> Prominent private proprietary law schools, such as the Peter Van Schaack's school in Kinderhook, New York and Tapping Reeve's school in Litchfield, Connecticut, emphasized English and American common law as well as private law.<sup>158</sup> Private law pertained to the practice of law, whereas public law emphasized constitutional law.<sup>159</sup>

Of these independent schools, Litchfield Law School is credited by scholars to have laid the foundation for today's legal education.<sup>160</sup> In 1774, in Litchfield, Connecticut, Tapping Reeve, a young attorney who had been practicing law for only two years, tutored his first law student: his brother-

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<sup>154</sup> See Douglas, *supra* note 2, at 206–07 (quoting William Short, a student of Wythe, on the virtue of apprenticeship and the skills learned “only in an attorney’s office” (internal quotation marks omitted)).

<sup>155</sup> *Id.* at 206. Renowned graduates such as Bushrod Washington of the U.S. Supreme Court and Spencer Roane of the Virginia Court of Appeals underwent apprenticeships; Joseph Cabell stated there was “some advantage” to an apprenticeship. *Id.* (internal quotation marks omitted).

<sup>156</sup> *Id.* at 210.

<sup>157</sup> *Id.* at 209. “[T]he weakness of legal apprenticeships, the decline in interest in the Inns of Court after the Revolution, and the limited opportunities for legal instruction in American colleges” allowed for the prosperity of proprietary law schools. *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> See *id.* (“These schools emphasized private law, as opposed to public law . . . . They paid far less attention to public law topics such as constitutional law . . . . Their focus was more explicitly to equip students to practice law . . .”).

<sup>160</sup> See Siegel, *supra* note 134, at 222 (“The cultural moment that inspired the Litchfield Law School ensured that legal education at Litchfield would have several distinctive characteristics: institutional independence, a professional (or postcollegiate) character, a national student body, a vocational focus, and an animating ethos that transcended the personal or the pecuniary. These characteristics should be familiar (at least in theory) to anyone attending a modern law school.”); see also *id.* at 227 (noting that Litchfield Law School “produced a workable model for modern legal education”).

in-law and future Vice President, Aaron Burr.<sup>161</sup> This came about as a result of recognizing the need and demand for formal legal education.<sup>162</sup> Hoping to mold such education to align with “his highly developed social vision,” Reeve went about creating an “unprecedentedly systematized and rigorous law school.”<sup>163</sup>

Soon thereafter, Litchfield matriculated “two of the most talented members of Yale’s . . . class of 1778”: Oliver Wolcott Jr., and future Senator Uriah Tracy.<sup>164</sup> By 1782, Reeve’s pedagogy consisted of “detailed lectures to [students] congregat[ed] around his office,” and by 1784, Reeve had constructed a freestanding schoolhouse.<sup>165</sup> The recognition of Reeve’s “tutoring system as a formal school” was based on “the growth of its student body, the formalization of its curriculum, the development of a library, the adoption of record-keeping procedures to further institutional memory, and the proliferation of organized pre-professional activities,” all of which came about slowly through the 1780s to the early 1800s.<sup>166</sup> It is estimated that Litchfield Law averaged ten to fifteen students per year during the late 1700s, and that this figure climbed to forty or fifty through the 1820s.<sup>167</sup> In 1797, Tapping Reeve accepted a seat on the Superior Court, Connecticut’s highest court.<sup>168</sup> The new judge selected a “partner to assist him in managing the Law School.”<sup>169</sup> This partner was James Gould, a lawyer who graduated first in his class at Yale in 1791 and who attended Litchfield Law School in 1795.<sup>170</sup> It has been said that whether lecturing on the law, debating politics or religion, or arguing causes in the courtroom, Reeve exhibited an “ardor unmatched by any of his contemporaries.”<sup>171</sup> James Gould, on the other hand, had an approach that was “philosophical,” and his arguments in court were brief.<sup>172</sup> Gould had an exceptional ability to identify the central legal issues of a case in a matter of seconds, and law students considered his lectures more meticulous and astute than those of Reeve.<sup>173</sup>

Litchfield Law School “was filled with a disproportionate large

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<sup>161</sup> *Id.* at 2002.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.* at 2002–03.

<sup>165</sup> *Id.* at 2003.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.* at 2003–04.

<sup>169</sup> *Id.* at 2004.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* (footnote omitted) (internal quotation marks omitted).

<sup>172</sup> *Id.* at 2005 (internal quotation marks omitted).

<sup>173</sup> *See id.* (noting Gould’s “universally acknowledged” talent and the characterization of his lectures by his students as “more methodical and perspicacious” than Reeve’s (internal quotation marks omitted)).

number of learned men, mostly Yale-educated.”<sup>174</sup> The Litchfield Law School offered a stringent academic regime for which it charged a fee of \$100 the first year of attendance and \$60 for the second year.<sup>175</sup> Ninety-minute morning lectures, where “[t]he law was presented as an orderly science revolving around a series of crucial principles,” were the foremost highlight of the day.<sup>176</sup> The lectures were presented successively through a progression of “titles” or topics.<sup>177</sup> These topics, as identified in manuscript lecture notes dating back to 1813, included: Introductory, Domestic Relations, Executors and Administrators, Contracts with Its Actions, Torts, Evidence, The Law Merchant, Equity, Sheriffs and Gaolers, Criminal Law, Pleading, Practice, and Real Property with Its Actions.<sup>178</sup> The lectures were “delivered over a fourteen to eighteen month period, interrupted by two month-long vacations every year.”<sup>179</sup> Because neither grades nor diplomas were offered, there was no need for any formal assessment; however, on Saturdays, students had informal exams.<sup>180</sup> These informal exams provided students the opportunity to impress leaders of the community, the bar, judges, the Federalist Party, and fellow students.<sup>181</sup> In addition, students also participated in moot court exercises.<sup>182</sup> Although moot court was part of the established British Inns of Court, Litchfield Law School was the first to debut moot court in America.<sup>183</sup>

The Litchfield lectures offered great opportunity to its students. It has been said that students would likely copy the lectures into the bound volumes for use in their legal practice.<sup>184</sup> This was significant because it would be decades before Chancellor Kent’s commentaries would be published and there were no comprehensive written authorities on the legal system of the nation or states.<sup>185</sup> Litchfield was unique, as law students knew that “a lawyer who emerged from his legal training with a systematic guide to the science and practice of law had a major advantage over his

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<sup>174</sup> *Id.* at 1991.

<sup>175</sup> *Id.* at 2005–06.

<sup>176</sup> *Id.* at 2006.

<sup>177</sup> *Id.*

<sup>178</sup> Mark L. Jones, *Fundamental Dimensions of Law and Legal Education: An Historical Framework—A History of U.S. Legal Education Phase I: From the Founding of the Republic Until the 1860s*, 39 J. MARSHALL L. REV. 1041, 1067–68 (2006).

<sup>179</sup> Siegel, *supra* note 134, at 2006.

<sup>180</sup> *Id.* at 2007.

<sup>181</sup> *Id.* at 2007–08.

<sup>182</sup> *Id.* at 2008.

<sup>183</sup> *Id.*

<sup>184</sup> *See id.* at 2007 (“On any given afternoon, the majority of students . . . cop[ied] the morning’s lecture into the bound folio volumes around which their legal practice would revolve.”).

<sup>185</sup> *See id.* (“In the decades before the publication of Chancellor Kent’s commentaries, no complete scholarly assessment of the legal system of the nation, or of any of its states, existed.” (footnote omitted)).

competitors,”<sup>186</sup> and that the Litchfield System of pedagogy gave the wherewithal to obtain such a guide and it was a main incentive to attend the Litchfield Law School.<sup>187</sup> In addition, “[t]he nation’s first law reports were prepared in a house on Litchfield’s main street during the 1780s and 1790s,”<sup>188</sup> which gave the school an advantage in offering its students a written compilation of law. The widespread publication of legal commentaries contributed to Litchfield’s decline because they could be acquired by larger numbers and not just by Litchfield students.<sup>189</sup>

Legal education evolved from the system of apprenticeship to formal educational programs providing a disciplined academic schedule which further demonstrates that even in the late eighteenth through the nineteenth centuries,<sup>190</sup> just as today, the emerging market economy should be the determinant of what pedagogy will serve and prepare law graduates the best.<sup>191</sup> Litchfield’s formal education and pedagogy has “been said to have sown the seeds of its own destruction.”<sup>192</sup> Litchfield was emulated by the next generation of law schools, which were notably represented by the very same Litchfield graduates who became educational leaders of the next generation.<sup>193</sup>

#### V. TODAY’S LEGAL EDUCATION: THE BEGINNING

Professor Joseph Story, who joined Harvard Law School in 1829,<sup>194</sup> combined the pedagogies of Jefferson and Wythe with that of Kent and those of the proprietary schools—public law training for citizenship and leadership and the private law.<sup>195</sup> Around the mid-1800s, professional schools (as part of larger universities) offered this method of pedagogy in legal education, which combined the proprietary schools’ emphasis on practical training with the earlier college-based law programs’ emphasis on

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<sup>186</sup> *Id.*

<sup>187</sup> *See id.* (“[A]quisition of such a guide was one of the primary reasons aspiring lawyers chose to study at the Litchfield Law School.”).

<sup>188</sup> *Id.* at 1991.

<sup>189</sup> *Id.* at 2019–20.

<sup>190</sup> *See id.* at 2005–06 (“The transition from an apprentice system of legal training to a formal scholastic program was marked by the emergence of a rigid and routinized academic schedules (a recalibration of life according to the [demands] of nineteenth century America).”).

<sup>191</sup> *See* Cavazos, *Demands of the Marketplace Require Practical Skills*, *supra* note 3, at 2 (indicating that law schools are “no exception to [the industry-induced modification of services available] in the United States and the global economy”).

<sup>192</sup> Siegel, *supra* note 134, at 2020.

<sup>193</sup> *Id.*

<sup>194</sup> *See* Douglas, *supra* note 2, at 210 (describing Joseph Story’s appointment as “the most significant event in American legal education since Jefferson’s 1779 reform” (internal quotation marks omitted)).

<sup>195</sup> *See id.* (“Justice Story succeeded in synthesizing the public law emphasis of Wythe . . . and Kent with the professional training of . . . others.” (internal quotation marks omitted)).

public law and the science of government.<sup>196</sup>

#### A. *The American Bar Association*

In the late 1800s, most American lawyers were educated in some form of law office study. With the number of law schools increasing,<sup>197</sup> in 1878, the ABA was founded.<sup>198</sup> Foremost for this new association was a comprehensive national plan for admission and regulation of bar members.<sup>199</sup> Thus, the ABA formed the Committee on Legal Education and Admissions to the Bar.<sup>200</sup> This Committee was charged with the daunting task to develop a national plan regulating the requirements for admission to the bar and the regulations for lawyers already admitted to practice in their own states.<sup>201</sup> At the second meeting of the ABA in 1879, the chair of the Committee on Legal Education and Admissions to the Bar asserted that there was a general consensus to “the relative merit of education by means of law schools.”<sup>202</sup> Rather than apprenticeship or mere practical training, law schools produced “the best informed” lawyers.<sup>203</sup> However, the recommendations presented by the committee were not adopted by the ABA assembly despite the growing number of law schools because those in attendance at the meeting were mainly practitioners and judges who had not learned the law through formal legal education.<sup>204</sup>

In 1892, a mere “[t]hirteen years later, the Committee on Legal Education and Admissions to the Bar presented the following resolutions at the annual meeting of the ABA”<sup>205</sup>:

*Resolved*, That as the American Bar Association strongly recommends that the power of admitting members to the Bar, and the supervision of their professional conduct, but in each State lodged in the highest court of the State . . . .

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<sup>196</sup> See *id.* at 209–10 (“When universities began full legal instruction in separate professional schools during the first half of the nineteenth century, they combined the proprietary schools’ emphasis on practical training with the earlier college-based law programs’ emphasis on public law and the science of government.”).

<sup>197</sup> See White, *supra* note 88, at 438 (“In the latter part of the nineteenth century and the first several decades of the twentieth, a number of new university law schools were created.”). “James P. White is consultant on legal education to the American Bar Association.” *Id.*

<sup>198</sup> *Id.* at 439.

<sup>199</sup> See *id.* (indicating that at its first meeting, the ABA adopted a resolution charging the Committee on Legal Education and Admissions to the Bar with developing “the requirements of candidates for admission to the bar, and for regulating . . . the standing . . . of gentlemen already admitted to practice in their own states”).

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.* (internal quotation marks omitted).

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

*Resolved*, That at least two years of study should be required of every student before he presents himself for examination . . . .<sup>206</sup>

The Committee on Legal Education continued its support of law schools, and in 1921, it adopted resolutions that are the foundation of the current approval process.<sup>207</sup> The ABA sets the standards and guidelines that American law schools must meet in order to be accredited and for their graduates to be eligible to be admitted as members of the Bar.<sup>208</sup> Additionally, the ABA oversees legal education in America in conjunction with state and local bars.<sup>209</sup>

### B. *Issues with Current Legal Education*

The purpose of legal education is to educate those persons who want to study the law either to obtain a Juris Doctorate for non-practice endeavors, or to pursue a career as a lawyer<sup>210</sup>—the latter being the more common endeavor. Law schools must provide a legal educational program pursuant to ABA standards.<sup>211</sup> In the first year, law schools are required to offer

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<sup>206</sup> *Id.*

<sup>207</sup> *Id.* at 440. The Committee on Legal Education became the Section on Legal Education and Admissions to the Bar, the first section established by the ABA. *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.* at 440–41.

<sup>210</sup> See AM. BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 301 (2012–2013) [hereinafter ABA STANDARDS], available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2012\\_2013\\_aba\\_standards\\_and\\_rules.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.pdf) (“A law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession.”).

<sup>211</sup> *Id.* § 302. Section 302 outlines the curriculum requirements:

#### Standard 302. CURRICULUM

(a) A law school shall require that each student receive substantial instruction in:

- (1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;
- (2) legal analysis and reasoning, legal research, problem solving, and oral communication;
- (3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;
- (4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and
- (5) the history, goals, structure, values, rules and responsibilities of the legal profession and its members.

(b) A law school shall offer substantial opportunities for:

- (1) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and



substantive law such as Contracts, Torts, Civil Procedure, Property, and Constitutional Law.<sup>212</sup> The remaining two years are a combination of required courses mandated by the school, and electives.<sup>213</sup> There are also law schools that require *pro bono* and/or clinical experience from their students.<sup>214</sup> It is through this requirement that law students attain many of their hands-on practical skills and some technical skills, while under the guidance and supervision of in-house and external legal organizations.<sup>215</sup>

Nevertheless, there is still a need and demand for competent lawyers, and law schools are endowed to provide the proper legal education that prepares students to be competent lawyers upon graduation.<sup>216</sup> Our rich legal history has shown us that legal education is an evolving process that requires us, as a society of scholars and learned individuals, to acknowledge necessary changes that revolutionize the way we prepare law students. These mandates, like in our early history, should determine the courses that are to be taught, the teaching methods that should be employed, and the skills that law students must develop.<sup>217</sup>

Since the late 1800s and early 1900s, legal education has been centered on theoretical and historical education rather than a combination of a

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the development of one's ability to assess his or her performance and level of competence;

(2) student participation in pro bono activities; and

(3) small group work through seminars, directed research, small classes, or collaborative work.

*Id.*

<sup>212</sup> Law schools may vary on substantive subjects. Harvard Law requires the following courses for first year law students: "Civil Procedure, Contracts, Criminal Law, 1L International/Comparative Law course, Legislation and Regulation, Property, . . . Torts, Legal Research and Writing, Problem Solving Workshop, [and] Spring upper-level elective course of a minimum of two and a maximum of four classroom credits." Off. of the Registrar, *Harvard Law School JD Degree Requirements*, HARV. L. SCH., available at <http://www.law.harvard.edu/academics/registrar/jd-degree-requirements.html> (last updated Jan. 24, 2013).

<sup>213</sup> *Id.*

<sup>214</sup> Schools with this requirement range from top-tier schools to newly-accredited law schools. For example, Harvard requires all J.D. students to contribute at least forty hours of law-related pro bono work as a condition for graduation. Harv. L. Sch. Off. of Clinical & Pro Bono Programs, *Clinical and Pro Bono Programs*, HARV. L. SCH., available at <http://www.law.harvard.edu/academics/clinical/> (last updated Jan. 10, 2013). Similarly, Florida A&M University requires students to perform twenty hours of pro bono work or to undertake a clinical program. *Required Course Descriptions*, FLA. A&M UNIV. COLL. OF LAW, available at <http://law.famu.edu/go.cfm/do/Page.View/pid/50/t/Required-Course-Sequence> (last visited Jan. 24, 2013).

<sup>215</sup> Cavazos, *Demands of the Marketplace Require Practical Skills*, *supra* note 3, at 8.

<sup>216</sup> *Id.* at 5 (citing Gary Blankenship, *Law Schools: Time to Get Practical?*, FLA. BAR NEWS, Aug. 1, 2009, at 1, 1).

<sup>217</sup> The United States is not the only country with a legal education system in need of reform. See Mao Ling, *Clinical Legal Education and the Reform of the Higher Legal Education System in China*, 30 FORDHAM INT'L L.J. 421, 431-32 (2007) (recommending that China incorporate more externships and clinical programs into its legal education).

theory/history and skill-oriented education model.<sup>218</sup> This focus has produced many problems. When legal education shifted away from apprenticeships, law students were no longer being taught how to apply legal knowledge to resolve practical problems.<sup>219</sup> In addition, law graduates may lack the ability to understand social problems and assist clients holistically by moving away from specialization of subject matter that limits legal education.<sup>220</sup> Cross-training students in legal areas and equipping them to be responsive to the client's non-legal concerns is imperative in today's society.<sup>221</sup> To promote higher competency of law students upon graduation, a skills-oriented pedagogy must be integrated into legal education so that a hands-on or clinical approach is offered from day one.<sup>222</sup>

C. *If Experience Teaches, Then Teachers Need Experience: Langdell's Antediluvian Vision*

After legal education moved away from the apprenticeship method, the recruitment of law school faculty was based on hiring teaching staff that had little to no experience with the practice of law, or a "distaste for the rough-and-tumble activities of the average lawyer's life."<sup>223</sup> The President of Harvard once exclaimed that the law school was *revolutionary* because the law school faculty was comprised of "men who have never been on the bench or at the bar."<sup>224</sup> Harvard Law subscribed to the same vision as Christopher Columbus Langdell: "What qualifies a person to teach law is not experience in the work of a lawyer's office, not experience in dealing with men, not experience in the trial or argument of causes—not experience, in short, in using law, but experience in learning law."<sup>225</sup> Publications stated that the practice of law for a length of time resulted in "intellectual disadvantages" and a lack of scientific intellect.<sup>226</sup> Soon, this phenomenon created law schools that subscribed to the Langdell–Harvard pedagogy of having law school faculty who had not practiced law or had practiced very little.<sup>227</sup>

In general, law schools have exceptional legal educators. However,

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<sup>218</sup> Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 908–10 (1933).

<sup>219</sup> *Id.* at 910.

<sup>220</sup> Cavazos, *Demands of the Marketplace Require Practical Skills*, *supra* note 3, at 18.

<sup>221</sup> Katherine R. Kruse, *Lawyers Should Be Lawyers, but What Does that Mean?: A Response to Aiken & Wizner and Smith*, 14 WASH. U. J.L. & POL'Y 49, 71 (2004) (discussing the different roles and duties a lawyer may take on in serving a client).

<sup>222</sup> Cavazos, *Demands of the Marketplace Require Practical Skills*, *supra* note 3, at 11, 30.

<sup>223</sup> Frank, *supra* note 218, at 908.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.* at 909.

<sup>227</sup> *Id.*

some of these academics have not tried or assisted with a case, written a brief, negotiated a settlement, drafted a complex contract, interviewed witnesses, or even advised a client.<sup>228</sup> As the study of law progressed into a more formal environment, the “distractions of office and court work were removed,” which affected law students and legal academia.<sup>229</sup>

#### D. *Substantive in Name Only*

It has been said that the pedagogy of the twentieth century legal education was oversimplified, for the foundation was mainly based on the study of appellate opinions.<sup>230</sup> Substantive law became the foundation of teaching, rather than practice, resulting in “cloistered” students.<sup>231</sup> The pedagogy turned to the study of cases. This is a misnomer, as law students do not study *cases*; they study appellate judicial opinions.<sup>232</sup> Judicial opinions are void of the realities and particulars that lead a jury or judge to return a certain verdict.<sup>233</sup> Judicial opinions do not allow students to *see* the parties or witnesses—the theatrical aspect of arguing the law before a jury—or even the reactions and human traits that frame a trial. Opinions are therefore, “censored exposition.”<sup>234</sup> It would be a mistake to discount the value of analyzing judicial opinions, as they set out legal rules and principles of law and the interpretation of the same. This is indeed invaluable to the practice of law, as these opinions equip a lawyer in his or her everyday practice.<sup>235</sup>

The next sections focus on two schools of thought that incorporate skills-training into their curriculum: American medical schools and the British barrister’s legal education system.<sup>236</sup>

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<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> *Id.* at 913.

<sup>231</sup> *Id.* at 909.

<sup>232</sup> *Id.* at 910.

<sup>233</sup> *Id.*

<sup>234</sup> *Id.* at 911 (emphasis omitted).

<sup>235</sup> See *id.* at 910 (stating that the knowledge of the legal rules and principles contained in printed legal opinions is part of the “indispensable equipment of the future lawyer”).

[T]he task of the lawyer may be summarized thus: (1) A lawyer tries to predict and anticipate a future enforceable court decision (*i.e.*, a judgment, order or decree) in a specific lawsuit relating to a definite client. (2) A lawyer tries to win a specific lawsuit; that is, to induce a court in a specific case to render an enforceable decision (*i.e.*, judgment, order or decree) desired by a definite client.

*Id.* at 911.

<sup>236</sup> This Author recognizes that many careers and professions now incorporate skills-training into their curriculums. However, the British legal system and medical school are the two chosen for comparison.

## VI. THE PHENOMENON OF AMERICAN MEDICAL EDUCATION AND TRAINING AS A MODEL FOR COMPETENCY TRAINING

To become a medical doctor in the United States, a lengthy, concentrated amount of education, training, and hard work are necessary.<sup>237</sup> This includes, at a minimum, four years of undergraduate education,<sup>238</sup> four years of medical school, and three years of graduate medical education.<sup>239</sup> In addition, there are certain medical specialties that require more education and training.<sup>240</sup>

Medical school, also known as “undergraduate medical education,” consists of an additional four years of post-graduate education in an American medical school, which is accredited by the Liaison Committee on Medical Education (“LCME”).<sup>241</sup> These four years at a school are comprised of two main phases: the pre-clinical and clinical.<sup>242</sup> At Dartmouth’s Geisel School of Medicine in New Hampshire, for example, students get their first experience with clinical practice during the beginning of their first year.<sup>243</sup> Students listen to a patient who describes his or her symptoms, then they listen to physician specialists who discuss the patient’s diagnosis and treatment options.<sup>244</sup> The goal from the outset is for students to ask themselves: “What is wrong with this patient/gentleman?” and to get them enthused about a real patient.<sup>245</sup> In addition, first-year students are assigned to a physician in the community whom they shadow once or twice a week.<sup>246</sup>

A doctor of medicine degree (“MD”) is earned upon completion of

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<sup>237</sup> See *Requirements for Becoming a Physician*, AM. MED. ASS’N, <http://www.ama-assn.org/ama/pub/education-careers/becoming-physician.page?> (last visited Jan. 25, 2013) (listing the steps necessary to pursue a medical career).

<sup>238</sup> Undergraduate education consist of four years of undergraduate school to earn a Bachelor of Arts or Bachelor of Sciences degree, typically with a strong emphasis on basic sciences, such as biology, chemistry, and physics, although some students may enter medical school with other areas of emphasis. *Id.*

<sup>239</sup> Instead of post-graduate education, the AMA uses the term “graduate medical education,” which includes residency and fellowship training. *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> *Education at the Geisel School of Medicine*, GEISEL SCH. OF MED. AT DART., [http://geiselmed.dartmouth.edu/ed\\_programs/](http://geiselmed.dartmouth.edu/ed_programs/) (last visited Jan. 25, 2013).

<sup>244</sup> See generally Sarah Hartley et al., *TEACHING IN THE CLINICAL SETTING* 7–9 (Oxford Univ. Press 2003), available at <http://fds.oup.com/www.oup.co.uk/pdf/0-19-851072-1.pdf> (describing the clinical teaching model which is comprised of two main cycles: experience and explanations).

<sup>245</sup> *Id.* at 19–20.

<sup>246</sup> See Barbara Bein, *Four New Medical Schools Welcome Charter Classes*, AAFP (Jan. 13, 2010), <http://www.aafp.org/online/en/home/publications/news/news-now/resident-student-focus/20100113new-med-schools.html> (discussing the college’s department of family medicine and community health and its support of first-year students in carrying out community health projects).

medical school.<sup>247</sup> There are other physicians that earn a doctor of osteopathic medicine (“DO”) degree from a college of osteopathic medicine.<sup>248</sup> Medical school graduates and graduates of osteopathic medicine must complete additional mandatory training before being licensed to practice as a physician.<sup>249</sup>

Graduate medical education, also known as the residency program,<sup>250</sup> commences with a national matching program.<sup>251</sup> The length of the residency training varies depending on the medical specialty, such as family practice, internal medicine, and pediatrics, etc., and can last from three to seven years or more of professional training under the supervision of senior physician educators.<sup>252</sup> There are also some doctors who want to become highly specialized in a particular field or subspecialty.<sup>253</sup> These MDs or DOs must complete a fellowship, which consists of one to three years of additional training.<sup>254</sup> After completion of the required phases of college,<sup>255</sup> medical school, and graduate medical education, MDs and DOs may apply for their permanent license *only* after completing an additional battery of exams.<sup>256</sup> A license to practice medicine<sup>257</sup> must be obtained from the state or jurisdiction<sup>258</sup> of the United States in which the MD or the DO is to practice.<sup>259</sup> Some physicians choose to become board certified, which is an optional process encompassing further tests to assess their knowledge, skills, and experience needed to be deemed qualified to

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<sup>247</sup> *Requirements for Becoming a Physician*, *supra* note 237.

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.* The AMA no longer uses the term “internship” to describe the first year of residency. *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.* An example of this is general surgery, which requires five years. *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> *Id.* Examples of specialties are child and adolescent psychiatry, and subspecialties of psychiatry, gastroenterology, internal medicine, and pediatrics. *Id.*

<sup>255</sup> See *Medical School*, AM. MED. ASS’N, <http://www.ama-assn.org/ama/pub/education-careers/becoming-physician/medical-school.page> (last visited Jan. 31, 2013) (“Preparing for medical school often means completing college prerequisites, earning a high grade point average and obtaining good recommendations. In addition to these tasks, aspiring physicians must often personally display evidence of their motivation, leadership and communication skills, and sense of service. Applying . . . can be a lengthy process. The AMA and the Association of American Medical Colleges offer all the information you need to help you manage from start to finish.”).

<sup>256</sup> *Requirements for Becoming a Physician*, *supra* note 237.

<sup>257</sup> See *Medical Licensure*, AM. MED. ASS’N, <http://www.ama-assn.org/ama/pub/education-careers/becoming-physician/medical-licensure.page?#> (last visited Jan. 31, 2013) (outlining the requirements for obtaining a medical license).

<sup>258</sup> “The process of obtaining a medical license—either initial licensure or subsequent license in another state—can be a challenging process. To help physicians navigate the licensure process and to provide up-to-date information on licensure requirements across all US states and jurisdictions, the AMA publishes annually *State Medical Licensure Requirements and Statistics*.” *Id.*

<sup>259</sup> *Requirements for Becoming a Physician*, *supra* note 237.

provide quality patient care in that specialty.<sup>260</sup> Unlike the medical profession, where the MDs and DOs must complete additional mandatory training (residency training) before being licensed as a physician, the American law school student, upon completion of his or her education, is able to sit for the bar exam to become licensed without additional required training.

#### A. Medical Education Has Undergone Changes

“A century ago, droves of medical students sat in stark lecture halls to absorb hours of oration by physician instructors.”<sup>261</sup> In those days, a large number of students had only a high school education; however, they were required to memorize “didactic descriptions of symptoms and diagnostic methods.”<sup>262</sup> In 1910, medical students had limited interaction with actual patients.<sup>263</sup> “Medical education has undergone major changes since [then].”<sup>264</sup> An evaluation of 155 medical schools in the United States and Canada was published by Abraham Flexner,<sup>265</sup> and is “credited with having laid the groundwork for modern medical education.”<sup>266</sup> As of this date, medical students receive early exposure to those skills gained from interacting with patients.<sup>267</sup> Medical education today strives to achieve the goal of moving “beyond ‘What do we need to do?’ to ‘How do we do what we need to do?’”<sup>268</sup> In American law schools, however, we have not

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<sup>260</sup> *Id.*

<sup>261</sup> Carolyn Krupa, *Medical Education Still Evolving 100 Years After Flexner Report*, AMEDNEWS.COM (Oct. 4, 2010), <http://www.ama-assn.org/amednews/2010/10/04/prsc1004.htm>.

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> *Abraham Flexner's Work*, INST. FOR ADVANCED STUDY, <http://www.ias.edu/people/flexner/work> (last visited Jan. 31, 2013). Abraham Flexner was a prominent figure in American education reform, particularly medical education, and he is the Founding Director of the Institute for Advanced Study. *Id.*

<sup>266</sup> Krupa, *supra* note 261.

<sup>267</sup> See *Requirements for Becoming a Physician*, *supra* note 237 (explaining the clinical elements of medical training during undergraduate education, medical school, and the residency program).

<sup>268</sup> Krupa, *supra* note 261 (quoting Susan Skochelak, MD, MPH, the AMA Vice President of Medical Education with regard to The New Horizons Conference, which was designed to bring medical school officials together to create a medium for new advancements).

American Medical Education continues to reform:

- “The AMA partnered with the Association of American Medical Colleges (AAMC) to host an invitational conference in September, ‘New Horizons in Medical Education: A Second Century of Achievement,’ as well as an online forum to encourage dialogue on the key issues in medical education and help chart the new directions for medical education for the next 10 years and beyond.”
- “The AMA’s Initiative to Transform Medical Education (ITME), started in 2005, [is] work[ing] to improve excellence in patient care by reforming the current medical education and training system.” For example, ITME is looking at how the

moved beyond “What do we need to do?” Students are expected to “practice” on clients without any of the benefits of training in a safe environment before they inflict their newly acquired license on clients. If a student elects to participate in the clinical program, a ten-to-fourteen week semester of hands-on training does not translate into competence.

## VII. BRITISH LEGAL EDUCATION FOR BARRISTERS: OUR FOUNDING ORIGIN AS A MODEL

Since the thirteenth century, barristers have been providing expert advice and advocacy, and for many years barristers held a monopoly on the right to represent people in the higher courts.<sup>269</sup> Although this is no longer the case, the Bar<sup>270</sup> remains a thriving profession, offering high quality advice and advocacy. While barristers are primarily regulated by the Bar Standards Board, the Inns of Court still occupy an important role in the barristers’ legal education and training, and a person can only be a barrister if he or she has been “called to the Bar” by an Inn of Court.<sup>271</sup>

Barristers offer two main services: advocacy and specialist opinion.<sup>272</sup>

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learning environment for medical students and residents contributes to developing one’s professional identity.

• “[T]he AMA’s Innovative Strategies for Transforming the Education of Physicians (ISTEP) group, which was launched in 2006 . . . [is] a unique medical education research collaborative [that brings] together individuals and institutions from across the continuum of physician learning.” By conducting rigorous research on how physicians learn, ISTEP investigators are developing the evidence base for decisions that will lead to needed reforms in physician education—a foundation that will translate into better care for patients. Currently, 28 medical schools are represented in this initiative.

*Improving Medical Education*, AM. MED. ASS’N, <http://www.ama-assn.org/ama/pub/education-careers/making-medical-education-better.page> (last visited Jan. 31, 2013); see also *Initiative to Transform Medical Education*, AM. MED. ASS’N, <http://www.ama-assn.org/ama/pub/about-ama/our-people/ama-councils/council-medical-education/topics/initiative-transform-medical-education.page> (last visited Jan. 31, 2013) (summarizing the three key issues that ITME addressed).

<sup>269</sup> *History of the Bar*, BAR COUNCIL, <http://www.barcouncil.org.uk/about-the-bar/what-is-the-bar/history-of-the-bar/> (last visited Feb. 27, 2013).

<sup>270</sup> The Bar in England and Wales is divided into regions for the purposes of the administration of justice. The Bar practicing in each region has formed its own group, known as a “Circuit.” “The Circuits provide important sources of support, advice and representation for barristers practicing in those areas.” *Circuits*, BAR COUNCIL, <http://www.barcouncil.org.uk/about-the-bar/what-is-the-bar/circuits/> (last visited Jan. 31, 2013). The Bar Council “discharges its regulatory functions through the independent Bar Standards Board.” *Mission Statement*, BAR COUNCIL, <http://www.barcouncil.org.uk/about-us/mission-statement/> (last visited Jan. 31, 2013).

<sup>271</sup> *Inns of the Court*, BAR COUNCIL, <http://www.barcouncil.org.uk/about-the-bar/what-is-the-bar/inns-of-court/> (last visited Jan. 31, 2013). The Inns provide important library, training, and dining facilities in London. *Id.*

<sup>272</sup> PETER KAY, UNIVERSITY OF NOTTINGHAM CENTRE FOR CAREER DEVELOPMENT, HOW TO CHOOSE BETWEEN SOLICITOR OR BARRISTER 1 (2006), available at [http://www.nottingham.ac.uk/shared/shared\\_careers/pdf/ideas-How\\_to\\_choose\\_between\\_Solicitor\\_and\\_Barrister.pdf](http://www.nottingham.ac.uk/shared/shared_careers/pdf/ideas-How_to_choose_between_Solicitor_and_Barrister.pdf).

The main difference between Barristers and Solicitors (the other British legal career) is that Barristers are self-employed.<sup>273</sup> In 2002, the Bar was a small profession of 13,600 practitioners, with 80% being independent or self-employed and 20%, known as the “employed Bar,” working in-house in government organizations, companies, and charities.<sup>274</sup> As the law has become more complex, barristers are becoming increasingly specialized in particular areas.<sup>275</sup> Accordingly, a number of Specialist Bar Associations provide support, training and representation for their affiliates.<sup>276</sup>

There are three main phases of a barrister’s training prior to legal employment: academic, vocational, and pupillage.<sup>277</sup> The academic phase consists of “an undergraduate degree in law . . . , or an undergraduate degree in any other subject followed by the conversion course.”<sup>278</sup> A qualifying law degree is an undergraduate law degree (single, joint or combined honors).<sup>279</sup> Every qualifying law degree covers legal research skills, Obligations I (Contract Law), Obligations II (Tort Law), Foundations of Criminal Law, Foundations of Equity & the Law of Trusts, Foundations of the Law of the European Union, Foundations of Property Law, and Foundations of Public Law.<sup>280</sup>

“The standard requirement for completion of the academic stage is a UK honours degree . . . or its equivalent.”<sup>281</sup> In pupillage applications, applicants with less than an Upper-Second Class degree are rarely considered by most organizations.<sup>282</sup> The academic phase for both barristers and solicitors is the same.<sup>283</sup> The transition from American legal education to employment as a lawyer is not a formal proposition. Some students acquire the equivalent of pupillage through law school clinics and

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<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> *Specialist Bar Associations*, BAR COUNCIL, <http://www.barcouncil.org.uk/about-the-bar/what-is-the-bar/specialist-bar-associations/> (last visited Jan. 31, 2013).

<sup>276</sup> *Id.*

<sup>277</sup> *How to Become a Barrister*, *supra* note 95.

<sup>278</sup> *Id.*

<sup>279</sup> *UK Undergraduate Study and Degrees*, EDUC. UK, <http://www.educationuk.org/Article/uk-undergraduate-study-and-degrees> (last visited Jan. 31, 2013).

<sup>280</sup> *Academic Process*, BAR COUNCIL, <http://www.barcouncil.org.uk/becoming-a-barrister/how-to-become-a-barrister/academic-process/> (last visited Jan. 31, 2013).

<sup>281</sup> *Id.*

<sup>282</sup> See *Statistics*, BAR COUNCIL, <http://www.barcouncil.org.uk/about-the-bar/facts-and-figures/statistics/> (last visited Jan. 31, 2013) (showing that only 4% of applicants who had a lower second class degree were considered); *Legal Education in the United Kingdom*, TOP-LAW-SCHOOLS.COM (Jan. 2011), <http://www.top-law-schools.com/legal-education-uk.html> (“To clear all stages of the credentialing process, a would-be lawyer should have a strong academic record: a First-Class undergraduate degree is ideal, although a 2:1 (Upper-Second Class) is usually competitive and a 2:2 (Lower-Second Class) might not sink an otherwise sterling resume.”).

<sup>283</sup> *Becoming a Barrister*, CITY L. SCH., <http://www.city.ac.uk/law/careers/become-a-lawyer/becoming-a-barrister> (last visited Jan. 31, 2013).



clerking at law firms and other entities that provide legal services. The majority of students enter the workplace with no real legal experience. American law students take similar, if not identical foundational classes in the first year and a combination of required and elective courses in the following years.<sup>284</sup> The number of courses that are required and the limited number of courses offered in specialize areas prevent students from graduating with recognized law specialty. Thus, the law degree issued upon completion of studies is a general Juris Doctor<sup>285</sup>—one degree fits all. Students that desire to gain expertise in a specialized area of law must do so by acquiring a post-graduate Masters of Law degree.<sup>286</sup> This option allows the student to gain specialized knowledge in a particular area of law.<sup>287</sup> Nonetheless, those students continue to lack the pupillage or practical training that a barrister or solicitor experiences. The specialized knowledge is just another exercise in theoretical learning.

#### A. *The Law Conversion Course*

The law conversion course is for those persons who hold a qualifying degree, but in a non-law subject.<sup>288</sup> After completing the conversion course,<sup>289</sup> these individuals must take the Common Professional Exam, also known as the Graduate Diploma in Law.<sup>290</sup> The full-time conversion course takes one academic year and the part-time course takes two years, with four foundation courses taken in the first year, and three in the second year.<sup>291</sup> Both the undergraduate law degree and the conversion course qualify a person to proceed to the next stage of barrister or solicitor training.<sup>292</sup>

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<sup>284</sup> *The Law School Experience*, LAW PREVIEW, <http://www.lawpreview.com/index.php/Resource/sExperience/> (last visited Jan. 31, 2013).

<sup>285</sup> *Understanding the Difference Between JD and LLM Degrees*, LAW SCH. ADMISSION COUNCIL, <http://www.lsac.org/llm/degree/jd-llm-difference.asp> (last visited Jan. 31, 2013).

<sup>286</sup> *Id.*

<sup>287</sup> *What Is an LLM?*, LLM GUIDE, <http://www.llm-guide.com/what-is-an-llm> (last visited Jan. 31, 2013).

<sup>288</sup> *How to Become a Barrister*, *supra* note 95.

<sup>289</sup> The conversion course route has an additional year of study. Barristers' chambers know that there are benefits to legal and non-legal degrees; therefore, they do not discriminate between applicants on this basis. *The Graduate Diploma in Law (GDL)*, CHAMBERS STUDENT, <http://www.chambersstudent.co.uk/Articles/206> (last visited Jan. 31, 2013).

<sup>290</sup> *Id.*

<sup>291</sup> *GDL*, LAW CAREERS.NET, <https://www.lawcareers.net/Courses/GDL> (last visited Feb. 25, 2013).

<sup>292</sup> See *Legal Education in the United Kingdom*, *supra* note 282 (stating that after students' undergraduate law degrees or conversion courses, aspiring solicitors complete a Legal Practice Course and aspiring barristers take the Bar Professional Training Course).

B. *The Vocational Stage: The Practical Course*<sup>293</sup>

Before commencing with the vocational stage, it is mandatory that a person join an Inns.<sup>294</sup> The vocational stage, known as the Bar Professional Training Course (“BPTC”) takes one year full-time or two years part-time.<sup>295</sup> The objective of this phase is to give the individual the necessary skills and knowledge to practice as a barrister.<sup>296</sup> The main skills taught as listed by the Bar Council are:

- Case work skills:
  - Case preparation, and
  - Legal research
- Written Skills
  - Opinion-writing (giving written advice on cases), and
  - Drafting (writing various types of documents for litigation)
- Interpersonal skills
  - Conference skills (interviewing clients)
  - Negotiation, and
  - Advocacy (court or tribunal appearances)
- Legal knowledge
  - Civil litigation & remedies
  - Criminal litigation & sentencing
  - Evidence
  - Professional ethics, and
  - Two optional subjects, selected from a choice of at least six<sup>297</sup>

The Bar Vocational Course provides skills needed to succeed:

- [L]egal research—analytical, seeing the wood for trees, attention to detail
- [F]act management—able to retain and manipulate large volumes of information and detail
- [O]pinion writing—able to argue on paper and to formulate options and recommendations
- [D]rafting—able to write clearly and concisely

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<sup>293</sup> *Vocational Training*, BAR COUNCIL, <http://www.barcouncil.org.uk/becoming-a-barrister/how-to-become-a-barrister/vocational-training/> (last visited Jan. 31, 2013).

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

- [C]onference—able to gather the right information from clients and solicitors
- [N]egotiation—able to reach a satisfactory conclusion based on several factors, including cost[, and]
- [A]dvocacy—able to represent another’s case in front of a court<sup>298</sup>

In addition, individuals must participate in role-playing, negotiating solutions to legal problems, practicing courtroom advocacy, interviewing, legal research, and drafting documents and written opinions.<sup>299</sup>

Although assessment varies from institution to institution, fundamental areas of knowledge are often assessed through multiple-choice tests.<sup>300</sup> Written skills are evaluated by the individual’s written papers, and advocacy, negotiation, and conference skills may be evaluated by videotaped performance of practical exercises.<sup>301</sup>

### C. Pupillage

The third phase is the pupillage, a working phase where a pupil participates for one year in an authorized training organization, such as the barristers’ chambers, marshaling with a judge, working for a solicitor’s firm, working with a European Union lawyer, or another approved legal environment.<sup>302</sup> Obtaining pupillage is a competitive process and some pupils who do not get pupillage on their first attempt decide to re-apply.<sup>303</sup> These pupils often seek out additional legal experience before the next round of applications.<sup>304</sup> In essence, this is additional practical training and it is similar to an apprenticeship where training is gained under the supervision of an experienced barrister.<sup>305</sup> After one year of pupillage, the pupil will be a fully qualified barrister.<sup>306</sup>

Pupillage is normally divided into two parts: the non-practicing called, the “first six,” and the practicing called the “second six.”<sup>307</sup> During the first six, a pupil normally observes their supervisor in conferences and in

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<sup>298</sup> HOW TO CHOOSE BETWEEN SOLICITOR OR BARRISTER, *supra* note 272, at 1.

<sup>299</sup> *Vocational Training*, *supra* note 293.

<sup>300</sup> *Id.*

<sup>301</sup> *Id.* The following schools offer the Bar Professional Training Course: Nottingham Law School, the College of Law in London, the College of Law in Birmingham, the BPP Law School in London, the BPP Law School in Leeds, and the Kaplan Law School. *Id.*

<sup>302</sup> *Pupillage*, BAR COUNCIL, <http://www.barcouncil.org.uk/becoming-a-barrister/how-to-become-a-barrister/pupillage/> (last visited Jan. 31, 2013).

<sup>303</sup> *Id.*

<sup>304</sup> *Id.*

<sup>305</sup> *Id.*

<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

court and reads their supervisor's paperwork.<sup>308</sup> In addition, the pupil performs legal research and drafts opinions and other court documents.<sup>309</sup> For the practicing period, "second six" pupils can also do some work on their own under supervision.<sup>310</sup> In some instances, a "third six" pupillage might have to be undertaken at another set of chambers if the pupil is not offered tenancy at the end of the pupillage term.<sup>311</sup>

#### D. Tenancy

Upon completion of the three stages, the final hurdle is to obtain tenancy in a set of barristers' chambers or to go into employed practice with a company or other organization that employs barristers.<sup>312</sup> Approximately 20% of barristers are employed in the private or public sector.<sup>313</sup> Two of the more popular options for those desiring to take up employed practice are the Government Legal Service ("GLS") and the Crown Prosecution Service ("CPS").<sup>314</sup> The GLS, which includes the central governmental agencies, departments, and public bodies, employs about 2,000 lawyers.<sup>315</sup> The GLS trains pupils and trainee solicitors and employs barristers and solicitors.<sup>316</sup> The CPS is a government department that "employs around 8,300 staff throughout the country and is responsible for the majority of prosecutions in criminal cases."<sup>317</sup> "The work is carried out by barristers and solicitors known as Crown Prosecutors."<sup>318</sup>

Both United States medical and British barrister training programs are more effective than the current U.S. legal training system because they offer students the opportunity to learn practical skills from the inception of their medical and legal educational training. Mandatory apprenticeship or residency training are required before licensing can occur, so that when they are sent out into the marketplace, they are prepared to handle everyday situations that arise in the course of their practice. They are able to "hit the ground running."

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<sup>308</sup> *Id.*

<sup>309</sup> *Id.*

<sup>310</sup> *Id.*

<sup>311</sup> *Id.*

<sup>312</sup> *How to Become a Barrister*, *supra* note 95.

<sup>313</sup> *Employed Bar*, BAR COUNCIL, <http://www.barcouncil.org.uk/becoming-a-barrister/practice-options/employed-bar/> (last visited Jan. 28, 2013); *see also* HOW TO CHOOSE BETWEEN SOLICITOR OR BARRISTER, *supra* note 272, at 1 (stating that the bar is a small profession where 20% of barristers are employed as in-house counsel for companies, charities, or government organizations).

<sup>314</sup> *Employed Bar*, *supra* note 313.

<sup>315</sup> *Id.*

<sup>316</sup> *Id.*

<sup>317</sup> *Id.*

<sup>318</sup> *Id.*

### VIII. A PROPOSAL FOR THE NEXT PHASE OF LEGAL EDUCATION FOR TODAY AND THE FUTURE

While legal education evolved as a formal pedagogy, law schools turned away from teaching practical skills and, in essence, left it to employers to teach lawyering basics.<sup>319</sup> In contrast to this pedagogy, approximately one hundred years ago, a movement began that advocated for law student “volunteer affiliations” with legal aid societies to be added to the law school curriculum, advocating for faculty interaction and supervision.<sup>320</sup> As a result, in the decades that followed, law schools heeded this call to provide service to the poor as a mission for social justice while providing clinical experiences to students and practical skills.<sup>321</sup> In the early 1900s, most law schools only offered a two-year course of instruction.<sup>322</sup> However, by the end of the first half of the century, a handful of law schools had instituted in-house clinical courses.<sup>323</sup> Interestingly, there were already concerns that having students participate in only one year of a legal clinical program was insufficient.<sup>324</sup> It was foretold many decades ago that it would be a “natural and logical development” that the clinic one day could possibly be “a principal medium of instruction in all years for all subjects.”<sup>325</sup> This concept was based on a form of clinical education where “students would take their clinic cases ‘to the classroom of the professor dealing with the subject under which the case logically falls.’”<sup>326</sup> Now is the time to realize this decades old vision, for the market no longer waits.

The pedagogy of the first year of law school is that students must study the foundational areas of law and master issue spotting. A law student’s first semester experience is, in many ways, similar to legal “boot camp.” The reading assignments are rigorous, the Socratic Method is intimidating and, at times, humiliating, and the competition is fierce. A first-year law student is submerged into a new world complete with its own languages: Latin and legalese. Law school demands students to restructure their

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<sup>319</sup> See Cavazos, *Demands of the Marketplace Require Practical Skills*, *supra* note 3, at 2–3 (stating that law schools using the Langdellian method of teaching students to “think like lawyers,” is insufficient to prepare students to practice law and makes them economically undesirable to hire).

<sup>320</sup> See Margaret Martin Barry et al., *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 6–7 (2000) (discussing William Rowe’s call for “volunteer affiliations”).

<sup>321</sup> See Cavazos, *Demands of the Marketplace Require Practical Skills*, *supra* note 3, at 13–15 (stating that schools developed clinical programs and varied legal educational experiences during the 1900s).

<sup>322</sup> Barry et al., *supra* note 320, at 6.

<sup>323</sup> *Id.* at 8.

<sup>324</sup> *Id.* at 6.

<sup>325</sup> *Id.* at 7 (emphasis omitted).

<sup>326</sup> *Id.*; see also Cavazos, *Demands of the Marketplace Require Practical Skills*, *supra* note 3, at 38 (concluding that clinics need to be brought into legal education to keep up with the economic demands).

perspectives, morals, and beliefs on both life and daily events. The first year is meant to turn the “wannabe” novice into a formidable law student. However, the restructuring of legal education would submerge the struggling first-year law student in another crucial facet, that of practical skills training from the first day because that is opportune time to lay the right foundation to create competent graduates. Students must be able to recognize the relationship of theory to practice from the very beginning in order to develop into law graduates who are able to “hit the ground running” upon graduation. The reality is that a first-year law student struggling to understand and identify main issues in appellate opinions is not ready for hands-on experience with live clients, but is able to undertake some very basic lawyering skills. Some law schools integrate “practical skills” from day one by offering simulated client scenarios, which relate back to issue spotting 101.<sup>327</sup>

#### A. *Academic Framework*

It is a known fact that foundational law classes must be undertaken to achieve a solid appreciation and understanding of the law. These include courses such as contracts, property, torts, civil procedure, constitutional law, and criminal law, while practical skills, for example, can be introduced in a first year course such as Contracts. The goal of this course would explore the basic principles of American contract law. It would examine changes in the law, including the contrast between classical and modern views of contract law. The primary sources used would be judicial decisions, statutes (principally, the Uniform Commercial Code), the Restatement (Second) of Contracts, and scholarly writing. This course is typically offered for three credits. However, if a practical skills “lab” is added for an hour and half, the course would be a total of 4.5 credit-hours. With the integration of practical skills, the law student would have an opportunity to learn the law as well as experience the practice of law by reviewing and/or drafting a contract. The course would be divided into two sections: theory and lab. The theory and lab could be taught solely by the doctrinal professor or the professor could co-teach with a practitioner or adjunct who would handle the skill/lab section. Likewise, Real Property could introduce drafting of deeds and the review of closing documents; Criminal Law could present a real-time case and law students could follow the case throughout its progression. Areas of law can offer theory and practice by learning and applying the law to real case scenarios.<sup>328</sup> In

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<sup>327</sup> See Cavazos, *Demands of the Marketplace Require Practical Skills*, *supra* note 3, at 8–9 (stating that the practical application of legal rules incorporates judgment).

<sup>328</sup> The objective of bifurcating the class into theory and lab from the inception of 1L is not only to prepare the student how to think like a lawyer, but also to teach him to do what lawyers do. Should we have a checklist that says in addition to learning the basic doctrine and basic law in every class, that

addition, since law schools offer research and writing classes in the first semester, the foundation is laid for where to find law, how to find law, and how to write using law. Some skill sets that can be incorporated in the lab sections are:

- Role play
- Quizzes—(outcome measures)<sup>329</sup>
- Writing exercises (i.e. contract drafting)
- Discussion boards
- Worksheets
- Papers/presentations
- Mind mapping<sup>330</sup>
- Reflective thinking/journal<sup>331</sup>
- Field trips/virtual learning environments—observations in court; visiting a law office; meeting with transactional lawyers
- Gaming<sup>332</sup>

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a 1L should be able to leave his Contract class knowing how to draft a contract? Leave Torts knowing how to recognize a tort, recognize the defenses, and maybe even draft a complaint? Or leave Constitutional Law able to go and work for The Lawyers Committee on Civil Rights and be able to lead a voter/election protection project because he understands implicitly not only the law but how the law works in the real world?

<sup>329</sup> See Cavazos, *The Journey Toward Excellence in Clinical Legal Education*, *supra* note 91, at 18–21 (discussing how giving students multiple assessments enhances the learning experience).

<sup>330</sup> Anthony J. Mento et al., *Mind Mapping in Executive Education: Applications and Outcomes*, 18 J. MGMT. DEV. 390, 390–416 (1999) (stating that mind mapping is a “revolutionary system for capturing ideas and insights horizontally on a sheet of paper” that was developed by Tony Buzan in 1970). “The special technique of mind mapping, which uses both sides of the brain and has them working together, is of benefit to mathematical thinking, which takes place in both sides of the brain.” Brinkmann, *supra* note 91, at 38. According to Brinkman:

Mind maps help to organise information. . . . Mind maps can be used as a memory aid. . . . Mind maps can be of help to repetition and summary. . . . A mind map may summarise the ideas of several students. . . . Mind maps help meaningfully connect new information with given knowledge. . . . New concepts may be introduced by mind maps. . . . Mind maps let cognitive structures of students become visible. . . . Mind maps foster creativity.

*Id.* 39–40.

<sup>331</sup> “Reflection is a skill that applies to professional responsibility, advocacy, and [from] educational [to personal] growth.” Cavazos, *The Journey Toward Excellence in Clinical Legal Education*, *supra* note 91, at 28. “[I]t consists of a student engaging in critical analysis of his or her own work.” *Id.* at 29. “Reflective thinking and journaling increase the students’ confidence through self-affirmation of what went well and addressing any missteps that might have occurred.” *Id.* at 29–30.

<sup>332</sup> See Donald B. King, *Simulated Game Playing in Law School: An Experiment*, 26 J. LEGAL EDUC. 580, 580 (1973–1974) (“[F]ail[ing] to use educational innovations in legal education is to ignore potentials of learning. If used in the second and third year, it may have the effect of taking away from some of the apathy or boredom which may sometimes occur during that period of legal education. Simulated learning has been recognized as a desirable technique by educators in recent years and it has

- Oral evaluation<sup>333</sup>

Accordingly, the second year offers a more diverse curriculum; but second-year law students are still not sufficiently versed in the black letter law to practice. The second year of law school normally offers students the opportunity to explore specialized areas of law and skill building, such as Trial Advocacy, Alternative Dispute Resolution, and Employment Discrimination, to name a few. In addition, the second year typically offers introductions to practical skills courses. Simulated client classes are also incorporated into most curriculums and offer law students a “hands-on” experience in dealing with clients and real world issues. However, the second year needs to offer more writing/drafting courses so that law students can learn the true art of crafting pleadings. In addition, the writing class could offer basic skills such as the drafting of pleadings, scheduling hearings, drafting correspondence, and being admitted to practice in courts. It should also expose students to the protocol that goes with a lawsuit, such as e-filing and Americans with Disability Act compliance, which are now requirements in federal and many state courts. Implementation of the skill set discussed above in the first and second year of the law student’s academic tenure can bolster not only their confidence, but also enhance their time in the legal clinic as well as prepare them for an outstanding legal career in the future.

The third year of law school is distinct. At this juncture, students have mastered the fundamentals of the black letter law. Therefore, all law students must be given the opportunity to enroll in a clinical course.<sup>334</sup> It is a well-founded principle that law students who participate in a rigorous program of clinical study benefit tremendously from hands-on training.<sup>335</sup>

Clinical programs offer many benefits, such as the opportunity to

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been used in elementary, high school and university levels. It has been tried in some university professional schools.”).

<sup>333</sup> See Cavazos, *The Journey Toward Excellence in Clinical Legal Education*, *supra* note 91, at 36–37 (explaining that oral evaluation provides a balance between written exams and oral reviews for students, and at the same time, provides students with practice to think under pressure, which occurs in courtrooms).

<sup>334</sup> See Cavazos, *Demands of the Marketplace Require Practical Skills*, *supra* note 3, at 11–12 (arguing that mandatory clinics would enhance legal education); see also Cavazos, *The Journey Toward Excellence in Clinical Legal Education*, *supra* note 91, at 17 (“The clinic experience is intended to impact both cognitive and effective outcomes, thereby providing students with substantive practical lawyering skills while simultaneously developing professional ethical values and behaviors.”).

<sup>335</sup> See Cavazos, *Demands of the Marketplace Require Practical Skills*, *supra* note 3, at 2 (describing the market’s demand for attorneys with practical skills and experience). Since 1968, Northeastern University School of Law has benefited from an exemplary practical learning educational model in its Cooperative Legal Education Program, which integrates experiential and collaborative learning. *About Northeastern University School of Law*, NORTHEASTERN UNIV. SCH. OF LAW, <http://www.northeastern.edu/law/about/index.html> (last visited Jan. 22, 2013). The program allows students to graduate with four quarter-length, full-time jobs on their resume. *Id.*



improve skills and gain knowledge while working with and under the supervision of practitioners.<sup>336</sup> Other advantages of clinics (and clinical methodology<sup>337</sup>) include issue spotting, drafting of legal documents, meeting and interviewing clients, advising clients (under supervision), developing client rapport, recognizing the importance of legal ethics, and collaborating with fellow law students. Theory and practice are essential components to the whole and cannot, and should not, be separated.<sup>338</sup> This combination is the “intellectual process” of theory and practice that creates a competent lawyer.<sup>339</sup>

Law school clinics, externships, and third-party internships have filled the void these last decades. Clinics are able to offer students exposure to a select number of areas of law, such as community economic development; business law; housing, landlord/tenant, foreclosure, and fair housing law; tax law; immigration defense; and domestic relations, to name a few. Most clinics follow the semester schedule, which can last from thirteen to fifteen weeks.<sup>340</sup> A student spends about ten weeks of his or her time in the actual clinic when one takes into account mandatory in-school training (classes), seminars, and mid-term and final exams.<sup>341</sup> However, law school clinical programs and externships have their shortcomings. Even clinics that mandate twenty hours per week are unable to provide a constant law firm experience. This also occurs in externships. However, some agencies do require students to commit to more than the maximum number of hours required by the clinical program or allowed by the ABA.<sup>342</sup> Law students who are able to commit to more hours reap a greater benefit than their counterparts in other programs. They are exposed to more litigation and trial preparation opportunities, which later make them better candidates for

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<sup>336</sup> See Neetal Parekh, *Top 10 Reasons to Enroll in a Law School Clinic in 2010*, FINDLAW (Jan. 6, 2010, 11:52 AM), [http://blogs.findlaw.com/greedy\\_associates/2010/01/top-10-reasons-to-enroll-in-a-law-school-clinic-in-2010.html](http://blogs.findlaw.com/greedy_associates/2010/01/top-10-reasons-to-enroll-in-a-law-school-clinic-in-2010.html) (listing the benefits of enrolling in a law school clinic).

<sup>337</sup> Elizabeth M. Schneider, *Integration of Professional Skills into the Law School Curriculum: Where We've Been and Where We're Going*, 19 N.M. L. REV. 111, 114 (1989) (describing clinical methodology and experiential learning as the integration of skills and substance).

<sup>338</sup> See *id.* at 112 (“Both theory and practice in legal education are sterile if divorced from each other.”).

<sup>339</sup> See *id.* (“The intellectual process of connecting theory and practice must be a major focus of legal education.”).

<sup>340</sup> See Kele Stewart, *How Much Clinic for How Many Students?: Examining the Decision to Offer Clinics for One Semester or an Academic Year*, 5 J. MARSHALL L.J. 1, 14–15 (2011) (“Limiting clinics to one semester is viewed as a way to offer clinical opportunities to more students without investing additional resources.”).

<sup>341</sup> See Margaret Moore Jackson & Daniel M. Schaffzin, *Preaching to the Trier: Why Judicial Understanding of Law School Clinics Is Essential to Continued Progress in Legal Education*, 17 CLINICAL L. REV. 515, 556 (2011) (“[S]tudents cannot benefit from experiential learning when the litigation event occurs over an exam period or semester break.”).

<sup>342</sup> See ABA STANDARDS, *supra* note 210, § 304(f) (“A student may not be employed more than 20 hours per week in any week in which the student is enrolled in more than twelve class hours.”).

the job market. Unfortunately, there are simply not enough programs to accommodate all law students adequately.<sup>343</sup> In addition, a significant number of legal jobs today for emerging attorneys require not only practical skills, but also litigation experience. The bottom line is that law school in-house clinics, and externships associated with such, are no longer the only viable solution to accommodate all law students seeking to be competitive in today's job market.

Another aspect for providing practical skills and experience is the apprenticeship method, which can complement legal education. This can be done by restructuring legal education to emulate medical schools and by incorporating British influenced apprenticeships. For example, Northeastern University School of Law has incorporated into its curriculum a mandatory apprenticeship called "co-op."<sup>344</sup> This program provides legal job placement assistance for upper-level students.<sup>345</sup> All students must complete this program prior to graduation.<sup>346</sup> A program like this can better prepare a student for the practice of law. Because this requirement is mandatory for graduation, it is essentially the equivalent of the British pupillage program, with the exception of the "first six" and "second six" formal segmentation.

Streamlining would occur as follows: first year would offer foundational courses with a lab; second year, electives and foundational courses; third year, mandatory clinics to prepare law students with the basics of live-client lawyering; and the fourth year, apprenticeships. Apprenticeships or full-time internships can be offered in various establishments that include governmental agencies (in all areas of government legal departments), legal aid societies, pro bono areas of private law firms, and even private law firms. Regulation of the apprenticeship would have to be standardized by the national and state bar associations. All agencies, both governmental and private associations/firms, would have to qualify through the ABA to be considered a qualifying apprenticeship entity.<sup>347</sup> Whether apprenticing in

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<sup>343</sup> See Mary Helen McNeal, *Unbundling and Law School Clinics: Where's the Pedagogy?*, 7 CLINICAL L. REV. 341, 385 (2001) ("At most law schools, clinical opportunities are limited, due in part to their expense and the low student-faculty ratio required.").

<sup>344</sup> *Co-op Student FAQs*, NORTHEASTERN UNIV. SCH. OF LAW, <http://www.northeastern.edu/law/co-op/plan/faq.html> (last visited Jan. 31, 2013).

<sup>345</sup> *Id.*

<sup>346</sup> *Id.*

<sup>347</sup> A solo practitioner in Florida implemented an apprenticeship program in his law firm by creating a "resident at law" position, which allows a brand new lawyer to practice his craft alongside an experienced practitioner. Annie Butterworth Jones, *Is It Time for Legal Residencies?*, FLA. BAR NEWS (Sept. 15, 2012), [www.floridabar.org/DIVCOM/JN/JNNews01.nsf/Articles/6A7319840E87387185257A7500443F1B](http://www.floridabar.org/DIVCOM/JN/JNNews01.nsf/Articles/6A7319840E87387185257A7500443F1B). The legal community is recognizing that brand new lawyers are lacking skills to practice law. When other stakeholders get involved in bridging the gap between

the state of Washington or Florida, the fundamentals of the program would be established, and expectations of the apprentice and the agencies or firms would be uniform. This is similar to the British legal education where agencies/firms must qualify to be a pupillage.

In this new legal education environment, legal educators would need to have notable experience as practitioners. It is said that lawyering skills and professionalism are best taught by an experienced practitioner.<sup>348</sup> Practitioners can enlighten law students on the holistic approach of representing clients and the realities of practicing law, whereas a legal educator who has never practiced or performed as little as filing a pleading might not appreciate the whole of the dynamics involved in lawyering. Students can only benefit by being taught by well-rounded educators.

Funding is an issue for such an endeavor. Law students would have financial aid available because they would continue to be enrolled in law school. Law schools could offer credit hours or charge a stipend to oversee apprenticeship placement, and minimal law school supervision would be needed to track where students apprentice because the ABA would be monitoring and qualifying entities. The law school involvement would be administrative in nature. Additionally, the ABA could charge a fee for the services it would administer, paid by law students and the entities themselves.

A law student's degree and transcript could signify that he or she undertook the extra year of apprenticeship. This new legal education opportunity could be offered as an optional fourth year. Although a legal education would take longer and the cost would increase, law students would benefit overall, as they would graduate as experienced competent practitioners. This would also benefit the legal profession, as huge numbers of law students and law schools would level off, thus corralling the number of attorneys graduating from law school. The ABA has stated that law schools do not need to accommodate every law student in live-client experiences,<sup>349</sup> but the goal needs to be just that: to provide practical skills to all students.<sup>350</sup> The ABA needs to address and correct this

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theory and practice, more apprentice or resident in law programs will be created for the new attorney. As a result, the program should be implemented with uniformity.

<sup>348</sup> Judith A. Frank, *Lessons and Ideas: Skills Instruction in Large Law School Classes*, 3 T.M. COOLEY J. PRAC. & CLINICAL L. 307, 310 (2000).

<sup>349</sup> See ABA STANDARDS, *supra* note 210, § 302-4 ("A law school need not accommodate every student requesting enrollment in a particular professional skills course."); see also Judith A. Frank, *supra* note 348, at 313 ("Standard 302 expressly states that law schools need not accommodate each and every student with live-client experience.").

<sup>350</sup> Schools that recognize this challenge have to take measures to correct this issue. For example, the University of Miami School of Law has designed a new program called "Legal Corps," a "postgraduate fellowship program that places recent graduates who are admitted to a bar into jobs and pays them \$2,500 a month for six months." Jack Crittenden, *Miami's Solution*, NAT'L JURIST, Jan. 2011, at 6, 6, available at <http://www.nxtbook.com/nxtbooks/cypress/nationaljurist0111/index.php?star>

position.

## IX. CONCLUSION

The objective of this Article was to place today's legal education into context by outlining the history of legal education and examining its evolution over the years. It appears that legal education has come full circle and we are indeed once again challenged with the issue of how to make law schools relevant. This shift in focus is based not only on recent economic woes, but also on technology, the Internet, and how we receive and process information. If the average citizen can search the Internet for legal information, what do they need the young lawyer to do for them? They need the young lawyer to use his or her practical skills to take the information and "do something" with it—to be a provider of legal services.

As the Dean of the Massachusetts School of Law stated:

[L]aw schools have long failed to teach students the practical skills they need to acquire because most of them become practitioners rather than academics[; and] Judges have continued to publicly admonish law schools for their failure to impart necessary information to students. . . . The homogeneity of the teaching profession has fed on itself, as homogeneity often does. As law teachers become ever less experienced in practice—i.e., as they became ever more one sided—their concern for the problems of practice decreased and their disdain for and desire to be wholly separate from

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tid=6. The bottom line is that the university is providing apprenticeship opportunities for its postgraduates. The new attorneys are gaining practical skills training from practitioners. This is a private university and funding may not be of great concern. However, public law schools' funding is an issue in this economic downturn and creative financing through grants may provide such opportunities for postgraduate training. Perhaps also utilizing the postgraduates in clinics will be beneficial to the clients, the postgraduate, and the law schools. On the other hand, law schools are taking action to bridge the gap between theory and practice by implementing curriculum change. For example, in August 2012, *The National Jurist's preLaw* magazine named New York Law School ("NYLS") one of the most innovative law schools in the country. Owen Praskievicz & Christina Thomas, *America's 20 Most Innovative Law Schools*, PRELAW BACK TO SCHOOL 2012, at 28, 30, 32 (2012). NYLS was the only New York City area law school to be included in the list of twenty schools. NYLS was singled out for applying the "medical school model" in its new Legal Practice Program for first-year students. *Id.*; see also *New York Law School Launches New Legal Practice Course*, N.Y. L. SCH. (Oct. 19, 2011), [www.nyls.edu/news\\_and\\_events/legal\\_practice\\_program/](http://www.nyls.edu/news_and_events/legal_practice_program/). Students in this required two-semester course work with "standardized clients" who are "trained actors with whom students practice their interviewing, fact-gathering, and counseling skills." *New York Law School Launches New Legal Practice Course*, *supra*. The program is "modeled after "'standardized patient'" exercises in medical schools." *Id.* The actors "assess students based on various criteria, such as how students talk to them, what questions the students ask, and whether they, as clients, feel satisfied at the conclusion of their interaction." *Id.* Launched in Fall 2011, the Legal Practice Program "provides students with a comprehensive introduction to [essential] lawyering skills at the beginning of their law school careers." *Id.*

practice increased. (There is nothing like ignorance to promote elitist views, contempt and separation).<sup>351</sup>

With this in mind, law schools can bring their students into the realm of the twentieth century, with the necessary tools needed to perform effective “Lawyering” by completely integrating practice skills into their curriculum, including the first year courses. This pedagogy and methodology would provide students not only theory, but also practice skills.

Our law schools need to prepare our students who will be applying for jobs in prestigious law firms or hanging up their own shingle. As in manufacturing, enlarging the manufacturing time and decreasing production, the output of supply is controlled—creating more of a balance in the market supply and demand. Today’s law schools have created the market glut by graduating too many students and by inadequately preparing graduates to hit the ground running. Law schools have to prepare students for the semi-holistic dimension of legal practice, which includes the interpersonal component of the practice of law.

Finally, it would appear that the future of the legal profession seems bleak if more practicum is not implemented. A transformation of legal education is a moral imperative and a competitive necessity to meet the demands of the current and future attorney marketplace. The one thing we can always depend upon is change. Growth demands change and change is inevitable.

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<sup>351</sup> LAWRENCE R. VELVEL, *THE DEEPLY UNSATISFACTORY NATURE OF LEGAL EDUCATION TODAY* 132, 140, 142 (1992).